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GAO

Report to the Chairman, Committee on Homeland Security, House of Representatives

December 2008

# IMMIGRATION BENEFITS

# Actions Needed to Address Vulnerabilities in Process for Granting Permanent Residency

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GAO-09-55

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December 2008

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Highlights

Highlights of GAO-09-55, a report to the Chairman, Committee on Homeland Security, House of Representatives

# IMMIGRATION BENEFITS

## Actions Needed to Address Vulnerabilities in Process for Granting Permanent Residency

### Why GAO Did This Study

Since September 11, 2001, a concern has been that terrorists or their supporters would seek to immigrate to the United States (i.e., seek lawful permanent residency (LPR)). The Department of Homeland Security's U.S. Citizenship and Immigration Services (USCIS) conducts background checks and the FBI conducts name checks for those applying for LPR. GAO was asked to review USCIS's processes for screening individuals applying for LPR. GAO assessed: (1) what available data show about the extent to which national security concerns were discovered during USCIS background checks for LPR applications, (2) what issues USCIS has encountered in its background check processes and what actions have been taken to resolve those issues, and (3) the extent to which USCIS has addressed fraud vulnerabilities in its adjudication procedures for LPR. To conduct this work, GAO analyzed USCIS background check and adjudication procedures, USCIS data on adjudications, and its assessments of fraud in applications for LPR, and interviewed USCIS and FBI officials.

### What GAO Recommends

GAO recommends that the Director of USCIS (1) establish timetables for addressing findings from its four benefit fraud assessments, and (2) establish requirements in LPR adjudications procedures on what evidence petitioner should be verified. USCIS agreed with our recommendations.

To view the full product, including the scope and methodology, click on GAO-09-55.
For more information, contact Rich Stana at (202) 512-8777 or stanar@gao.gov.

### What GAO Found

Available data show that of the approximately 917,000 applications for LPR USCIS received from January 1, 2006, through May 31, 2007, 516 (0.05 percent) were referred to USCIS's Office of Fraud Detection and National Security (FDNS) for national security concerns. According to FDNS, the cases referred to it involved individuals on a watch list which included names of known and suspected terrorists, or posed other national security concerns such as individuals who associated with suspected terrorists or engaged in espionage. While USCIS's application case management system was not designed to capture and routinely generate detailed statistics on those posing national security concerns, FDNS has developed a separate system to capture such data.

USCIS had encountered delays in obtaining the results of FBI name checks—FBI checks of its investigative files—for LPR applicants and others, and had issues regarding the usefulness of these results, but USCIS and the FBI have taken a number of actions that have improved these checks. The FBI dedicated more staff to process name checks, and USCIS provided additional funding and training to FBI staff. As a result, the number of pending name checks has decreased 90 percent, from 329,000 in May 2007 to 32,000 as of September 30, 2008. The FBI plans on being able to complete all name checks within 90 days of receipt by June 2009.

USCIS has taken some actions to address vulnerabilities identified in one of its assessments of fraud, called Benefit Fraud and Compliance Assessments (BFCA), but has yet to complete actions to address vulnerabilities identified in four other BFCAs. To conduct BFCAs, FDNS selected a sample of petitions to determine the extent of fraud and identify any systemic vulnerabilities in USCIS's adjudications processes. Internal control standards call for agency managers to promptly evaluate findings from audits and reviews, determine proper actions to take, and complete them within established time frames. Although FDNS completed all of these assessments between June 2006 and September 2007, USCIS has not established time frames for evaluating these findings and implementing any necessary corrective actions. Until USCIS takes corrective actions, vulnerabilities identified by these BFCAs will persist, increasing the risk that ineligible individuals will obtain LPR status. Lack of verification of the evidence submitted with petitions is one of the major vulnerabilities identified in these BFCAs. For example, FDNS staff found that individuals claiming to be married were not, employers did not exist, and aliens did not have the education or skills they claimed. USCIS procedures give its staff discretion on deciding whether to verify evidence submitted with petitions. The BFCAs have shown that adjudicators following these procedures have approved fraudulent petitions. Verifying all petitioner-submitted evidence is impossible. Procedures that require verifying certain evidence under certain circumstances would help adjudicators better detect fraud and help USCIS maintain the balance between fraud detection and USCIS's customer service and production-related objectives.

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## Abbreviations

| | |
|---|---|
| BFCA | Benefit Fraud and Compliance Assessment |
| CCD | Consolidated Consular Database |
| CLAIMS | Computer Linked Application Information Management System |
| DHS | Department of Homeland Security |
| DOJ | Department of Justice |
| FBI | Federal Bureau of Investigation |
| FDNS | Fraud Detection and National Security |
| ICE | Immigration and Customs Enforcement |
| INA | Immigration and Nationality Act |
| KST | Known or suspected terrorist |
| LPR | Lawful Permanent Residence (or Resident) |
| Non-KST | Non-known or suspected terrorist |
| NSRV | National Security and Records Verification |
| OIG | Office of Inspector General |
| OSI | Office of Security and Integrity |
| TECS | Treasury Enforcement Communications System |
| TSC | Terrorist Screening Center |
| USCIS | United States Citizenship and Immigration Services |

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**United States Government Accountability Office**
**Washington, DC 20548**

December 5, 2008

The Honorable Bennie G. Thompson
Chairman
Committee on Homeland Security
House of Representatives

Dear Mr. Chairman:

In 2004, the staff of the National Commission on Terrorist Attacks Upon the United States (the 9/11 Commission) reported that, while there were efforts to enhance border security prior to the September 2001 terrorist attacks, no agency of the U.S. government thought of the immigration process as an antiterrorism tool at that time. The 9/11 Commission's staff found that the U.S. Immigration and Naturalization Service's "inability to adjudicate applications quickly or with adequate security checks made it easier for terrorists to wrongfully enter and remain in the United States throughout the 1990s." While all 19 of the September 11, 2001, terrorist hijackers were issued nonimmigrant visas, the 9/11 Staff Report stated that terrorist group members could seek to become lawful permanent residents, thus "embedding" themselves in the United States indefinitely, to conduct or support terrorist activities. Becoming lawful permanent residents would also allow them to travel freely in and out of the country, thus making it easier to plan a terrorist attack.

Aliens granted lawful permanent resident status are formally classified as immigrants and receive a permanent residence card commonly referred to as a green card. Aliens can obtain lawful permanent resident status in the United States in one of two ways. Aliens overseas can apply for an immigrant visa with the Department of State and enter directly as an immigrant. Aliens already in the United States with a temporary visa (nonimmigrant status), such as foreign students and certain temporary workers, can apply to adjust their status to that of a lawful permanent resident if they are eligible for an immigrant visa category. Asylees who have been in the United States for 1 year also may apply to adjust their status in the United States while individuals admitted as refugees are required, by regulation, to apply for adjustment of status after one year of admission. Within the Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) is primarily responsible for processing applications of aliens seeking the ability to either live or work in the United States permanently or on a temporary basis or to become United States citizens. In recent years, the majority of aliens who became


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lawful permanent residents were already in the United States and applied to USCIS for lawful permanent residency. In general, aliens who seek to immigrate permanently must be sponsored by a U.S. citizen, lawful permanent resident, or a business entity. Immigration law identifies a number of different immigration categories that allow aliens to become lawful permanent residents, such as family members of U.S. citizens or lawful permanent residents or employees of companies in the United States.

USCIS has instituted three background check procedures to identify applicants for lawful permanent residency who may pose a risk to national security or public safety.[1] USCIS checks an alien's name against the Treasury Enforcement Communications System (TECS) which includes data exported from the Terrorist Screening Center's (TSC) watch list of known or appropriately suspected terrorists (KST). USCIS also conducts fingerprint checks carried out by the Department of Justice's Federal Bureau of Investigation (FBI) to determine if an alien has a criminal conviction that may make the alien ineligible to become a permanent resident. In addition, USCIS requests that the FBI conduct a name check against the FBI's administrative and investigative files to identify individuals the FBI has investigated due to national security or public safety concerns. While TECS and FBI fingerprint checks are completed early in the application process, USCIS data have shown the FBI name check results may not be completed for several months or more, thereby delaying a final adjudication decision. Such delays may allow individuals with potential national security concerns to remain in the United States for an extended period of time before USCIS becomes aware of these concerns.

In response to your request, we reported on the fraud risks that complicate the Department of State's ability to screen certain visa applicants.[2] You also requested that we review USCIS's processes for screening aliens already in the United States applying to adjust their status

[1] USCIS would conduct these three background checks again for those Asylees who apply for permanent residency.

[2] GAO, *Border Security: Fraud Risks Complicate State's Ability to Manage Diversity Visa Program*, GAO-07-1174 (Washington, D.C.: Sept. 21, 2007).


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to that of a lawful permanent resident. This report addresses the following questions:

- What do available data show about the extent of national security concerns discovered during USCIS background checks for lawful permanent residence applications?
- What issues has USCIS encountered in its background check processes and what actions have been taken to resolve those issues?
- To what extent has USCIS addressed identified vulnerabilities in its adjudications procedures for permanent residency?

To determine what available data show about the extent of national security concerns discovered during USCIS background checks for lawful permanent residence applicants, we obtained data about the number of permanent residence applications that were referred to USCIS's Office of Fraud Detection and National Security (FDNS) for national security reasons from January 2006, when FDNS began capturing these data, through May 2007, the date of our request for this information. We interviewed knowledgeable agency officials about the source of the data and the controls FDNS had in place to maintain the integrity of the data and determined that the data were sufficiently reliable for the purposes of our report. We also interviewed USCIS and Immigration and Customs Enforcement (ICE) officials on the extent to which individuals posing threats to national security or public safety applied for permanent residency under various immigration categories, such as special immigrant religious workers and alien relatives. We also obtained statistics on the national security cases referred to FDNS. Because FDNS's system that tracks national security cases does not yet capture the visa categories used (e.g., family- or employment-based applications) and whether the immigration benefits were granted or denied, we requested FDNS to provide these data by matching FDNS's data with data in USCIS's application case management system. We analyzed USCIS procedures and guidance for referring national security cases to FDNS, as well as eligibility requirements defined in the Immigration and Nationality Act (INA). To better understand the nature of the national security cases and the related information provided by the FBI about them, we performed a content analysis of a random sample of 100 FBI name check responses received from January through June 2007. FDNS originally selected this sample to determine how often the FBI name check provided unique information not available from the other two background checks. To identify what issues USCIS has encountered in its background check processes and what actions have been taken to resolve those issues, we analyzed (1) USCIS policies and procedures for conducting TECS queries,


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FBI fingerprint checks, and FBI name checks, as well as related interagency memoranda of understanding on requesting and conducting FBI name checks, (2) USCIS data on the number of pending FBI name check requests, and (3) the FBI's and USCIS's actions to improve the name check program. We interviewed knowledgeable agency officials about the source of USCIS's pending FBI name check data and the controls USCIS had in place to maintain the integrity of the data and determined that the data were sufficiently reliable for the purposes of our report. We discussed the actions USCIS and the FBI had taken and planned to take to improve the name check program with key agency officials, including the Associate Director of USCIS's National Security and Records Verification Directorate (NSRV) and the Section Chief of the FBI's National Name Check Program. To determine the extent to which USCIS was addressing vulnerabilities in its adjudications procedures for permanent residency, we analyzed current USCIS standard operating procedures and other guidance provided to adjudicators for processing applications for lawful permanent residency. We also analyzed FDNS reports on assessments it completed to determine the extent and nature of fraud in certain application types that may lead to permanent residency, known as Benefit Fraud and Compliance Assessments (BFCA). We interviewed FDNS managers responsible for administering the BFCAs, reviewed documentation outlining the BFCAs' design, methodology, and implementation, and determined that the results were sufficiently reliable for the purposes of our report. We also compared how USCIS addressed the findings of its BFCAs with criteria in *Standards for Internal Control in the Federal Government*[3] and with standard practices in program and project management for defining, designing, and executing programs.[4] We conducted this performance audit from May 2007 through November 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit

[3]GAO, *Standards for Internal Control in the Federal Government*, GAO/AIMD-00-21.3.1 (Washington, D.C.: Nov. 1999). These standards, issued pursuant to the requirements of the Federal Managers' Financial Integrity Act of 1982 (FMFIA), provide the overall framework for establishing and maintaining internal control in the federal government. Also pursuant to FMFIA, the Office of Management and Budget issued Circular A-123, revised December 21, 2004, to provide the specific requirements for assessing the reporting on internal controls. Internal control standards and the definition of internal control in Circular A-123 are based on GAO's *Standards for Internal Control in the Federal Government*.

[4] The Project Management Institute, *The Standard for Program Management*©, (Newton Square, PA: 2006).


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objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Appendix I includes more detailed information on our scope and methodology.

## Results in Brief

Summary data provided by FDNS showed that of the approximately 917,000 applications for lawful permanent residency USCIS received from January 1, 2006, through May 31, 2007, 516 were referred to FDNS for national security reasons. According to FDNS officials, approximately 10 percent of all the cases referred to it—including applications for lawful permanent residency and other benefits—involved individuals on TSC's watch list. The other national security cases referred to FDNS involved individuals who were not on the terrorist watch list, but whose background checks indicated other possible national security concerns, such as those having associations with known or suspected terrorists or terrorist organizations, or involved in espionage. USCIS's case management system that tracks applications was not designed to capture and routinely generate reports on the extent, type, and nature of national security threats posed by applicants. Therefore, to provide USCIS with more comprehensive data on those applicants who may pose a national security threat and those who try to obtain immigration benefits through fraud, FDNS is developing a separate system to capture and analyze information such as visa category and eligibility decision information on those cases referred to FDNS for national security reasons. However, this system does not yet routinely provide statistics on the visa categories used (e.g., family- or employment-based applications) and whether the immigration benefits were granted or denied. Having the capability to analyze trends in application types used and strategies employed by individuals with national security concerns on a continuous basis should help identify those types of applications that may need additional scrutiny and whether USCIS adjudications procedures need strengthening. FDNS plans to have this capability by the middle of fiscal year 2009.

Of the three background checks—TECS check, FBI fingerprint check, and FBI name check—conducted on lawful permanent residence applicants, USCIS raised concerns about the timeliness and usefulness of FBI name check results, and has taken several actions in conjunction with the FBI to address these issues. To improve timeliness, in April 2008, USCIS and the FBI announced a joint plan with the ultimate goal of completing 98 percent of the name checks within 30 days of receipt by the FBI, and the remaining 2 percent within 90 days, by June 30, 2009. To achieve this goal, the FBI assigned additional staff and hired contractors, with funds


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contributed by USCIS, to work exclusively on USCIS name check requests. The FBI also developed plans for improving its business processes and file management systems. As a result of these actions, significant progress has been made in reducing the number of pending name checks. As of September 30, 2008:

- the total number of pending name checks decreased 90 percent, from about 329,000 in May 2007 to about 32,000;
- the number of name checks pending longer than 90 days decreased about 92 percent from about 211,000 in May 2007 to about 18,000;
- the number pending more than 2 years decreased 99 percent from about 24,000 in May 2007 to 46; and
- the FBI had eliminated all name checks pending more than 3 years.

According to FDNS, the name check results USCIS received from the FBI were often vague or not useful for making eligibility determinations. To improve the usefulness of the FBI name check results, USCIS began assigning staff to the FBI name check program in February 2008 to train FBI staff on identifying and providing more relevant information to USCIS adjudicators when making eligibility determinations. USCIS officials told us that since USCIS staff began working with FBI staff, the quality of the information the FBI provides has improved, for example, by including such things as summaries of the nature and extent of the national security concerns.

USCIS has taken actions to address vulnerabilities identified in one of six Benefit Fraud and Compliance Assessments (BFCA) of certain immigration petitions and applications that may lead to permanent residency, did not need to take action on one BFCA, but has not completed the actions necessary to address the vulnerabilities identified in the remaining four BFCAs. *Standards for Internal Control in the Federal Government* require that agency managers complete, within established time frames, all actions that correct or otherwise resolve the matters brought to management's attention. Also, standard practices for program management call for establishing specific milestones to achieve results. Standard practices for program management also call for assigning responsibility and accountability for ensuring the results of program activities are carried out. FDNS issued reports on three of the six BFCAs begun in 2005 and 2006. One of the three reports contained recommendations to address vulnerabilities related to petitions for religious workers, another for petitions for skilled and unskilled workers. One report related to applications to replace green cards did not recommend any changes to existing procedures. USCIS has taken some


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actions to implement recommendations to mitigate fraudulent petitions for religious workers, but has yet to address the findings from its BFCA on petitions for skilled and unskilled alien workers and has not established a timetable for doing so. In addition, USCIS has yet to address the findings from three other BFCAs—petitions for alien spouses, for alien relatives from Yemen, and applications for asylum. As of July 2008, FDNS officials told us they were still collecting comments about what actions are needed to address the findings from these BFCAs from various USCIS offices that would be involved in implementing any proposed recommendations. However, USCIS management had not established timetables for collecting these comments, evaluating and making decisions about what actions are necessary to address the findings and any recommendations from these assessments, and implementing any agreed upon actions as called for by internal control standards.

Until USCIS addresses vulnerabilities identified in the BFCAs and implements corrective actions, these vulnerabilities will persist, increasing the risk that ineligible individuals will obtain lawful permanent residency. Failure to verify the evidence applicants and their petitioners provide is one of the vulnerabilities identified in these BFCAs and one that we reported on in 2006.[5] USCIS's standard operating procedures give adjudicators the discretion to decide when and under what circumstances they will check petitioner-submitted evidence against internal and external databases. The BFCAs have shown that adjudicators following these procedures have approved fraudulent petitions. The findings from the BFCAs have also shown the kinds of petitioner-submitted evidence that may need to be verified, such as whether couples claiming to be married live together, whether employers exist, and whether aliens seeking employment have the education or skills they claim. Procedures that require verifying certain petitioner-submitted evidence under certain circumstances, as indicated by BFCA findings, would help adjudicators better detect fraud.

To help ensure that findings from USCIS benefit fraud and compliance assessments are acted upon, and to enhance USCIS's overall fraud detection efforts, we recommend that the Director of USCIS take the following actions.

[5] GAO, *Immigration Benefits: Additional Controls and a Sanctions Strategy Could Enhance DHS's Ability to Control Benefit Fraud*, GAO-06-259 (Washington, D.C.: Mar. 10, 2006).


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- Prepare a roadmap for each of the four outstanding benefit fraud and compliance assessments (petitions for skilled and unskilled workers, spouses, relatives from Yemen, and applications for asylum) that delineates (1) timetables for deciding what actions to take, (2) what USCIS organizational units will be responsible for implementing those actions, and (3) a timetable for implementing agreed upon actions.
- Modify adjudication procedures for family- and employment-based petitions to include requirements on what evidence should be verified.

We provided a draft of this report to DHS and the Department of Justice for official comment. DHS and USCIS agreed with our recommendations and their comments are reprinted in appendix II. USCIS also provided technical comments, which we considered and incorporated where appropriate. The Department of Justice had no comments on the report.

## Background

USCIS is responsible for processing applications for immigration benefits—the ability of an alien to live and in some cases work in the United States either permanently or on a temporary basis. As of September 2008, USCIS had a staff of 10,477 federal employees and 8,005 full-time equivalent contractor staff and a budget of over $2.6 billion. Approximately $2.5 billion was from fees it collects from applicants for immigration benefits and the rest was from congressional appropriations. Figure 1 shows USCIS's organization.


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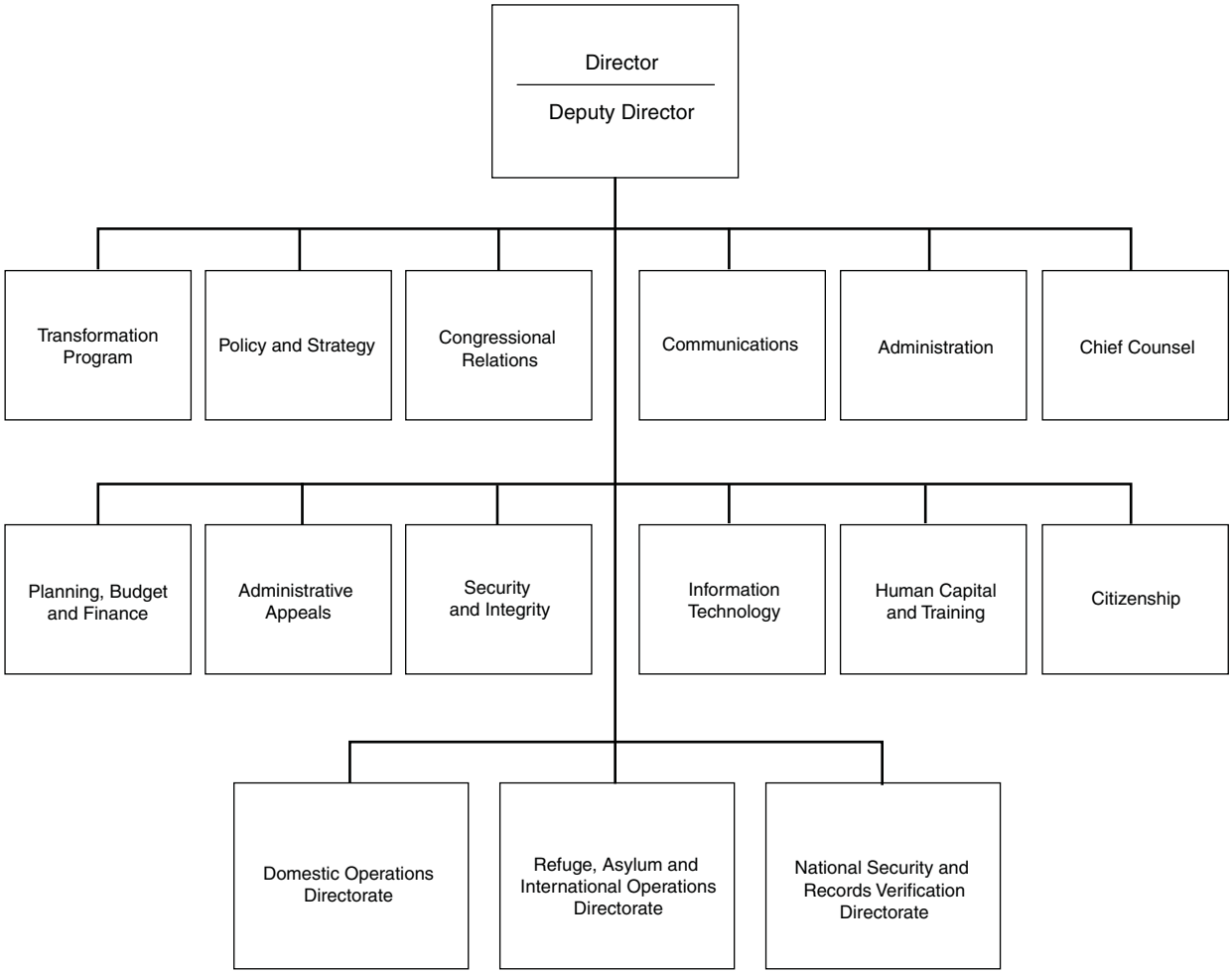
**Figure 1: USCIS's Organization**




Source: USCIS.

USCIS carries out its function through its headquarters office in Washington D.C., and its network of service centers and field offices. USCIS has three main operational directorates. The Directorate for Domestic Operations is responsible for adjudicating immigration benefits for those individuals in the United States, including those seeking permanent residency and citizenship. Adjudicators—USCIS staff that determine eligibility for immigration benefits—are located in four service centers that generally adjudicate applications that do not require interviews with the applicants, as well as 90 offices (26 districts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responsible for 64 field offices) located around the country that generally adjudicate applications that require interviews with applicants. In addition, the National Benefits Center, within Domestic Operations, serves as a central processing hub for certain immigration benefit applications that are ultimately adjudicated in USCIS field offices.[6] The Directorate for Refugee, Asylum, and International Operations adjudicates applications for asylum in eight offices in the United States, has staff located in 27 countries, and according to a directorate official, deploys officers to 50-70 countries to interview approximately 100,000 refugee applicants each year.

The Directorate for National Security and Records Verification (NSRV) is responsible for detecting fraud, facilitating the resolution of national security-related background check cases and other concerns, and maintaining files on aliens, commonly known as A-files. FDNS within NSRV is responsible for detecting, pursuing, and deterring immigration benefit fraud, and identifying persons seeking benefits who pose a threat to national security and public safety. As of July 2008, FDNS had 474 staff (including 10 contractors), 359 of which were located in USCIS service centers, asylum offices, and district offices. FDNS is USCIS's primary conduit to law enforcement and intelligence agencies. FDNS staff, among other things, also review applications forwarded by adjudicators to determine if there is sufficient evidence to forward the case to ICE for criminal investigation. In addition, FDNS staff conduct site visits and follow up with law enforcement and intelligence agencies on potential national security risks identified during background checks on immigration benefit applications.

One of FDNS's main goals is to identify and evaluate vulnerabilities in USCIS policies, practices, and procedures that threaten the integrity of the legal immigration benefit process and make it vulnerable to exploitation by individuals—including potential terrorists—seeking benefits for which they are not eligible. To help achieve this goal, in 2005 FDNS began a series of assessments, called Benefit Fraud and Compliance Assessments (BFCA), to determine the extent of fraud for selected immigration benefits it considered high risk for fraud and identify any systemic vulnerabilities in USCIS's adjudications processes. The results of these assessments

[6] The National Benefits Center processes (1) applications for adjustment of status to lawful permanent resident, (2) applications for employment authorization, (3) applications for travel documents, and (4) petitions for alien relatives.


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would serve as a basis for any proposed changes in policies, procedures, or regulations to mitigate any identified vulnerabilities.

Over the last 3 years, USCIS processed about 6 million applications for immigration benefits each year, of which about 1 million individuals were granted lawful permanent resident status each year. For example, in 2007, of the 1,052,000 aliens who were granted lawful permanent residence status, about 621,000 (59 percent) were already living in the United States under a different status, including refugees, certain temporary workers, foreign students, and family members, or were undocumented.[7]

Immigration law gives priority, or preference, to foreign nationals who have a close family relationship with a U.S. citizen or lawful permanent resident, have needed job skills, or who have refugee or asylum status. Immigration law limits the number of family- and employer-sponsored immigrants.[8] There is no limit, however, on the number of immediate relatives of U.S. citizens seeking lawful permanent residency.[9] In 2007, immediate relatives represented 47 percent of all aliens granted lawful permanent resident status. Figure 2 shows the percentage of aliens granted lawful permanent resident status in 2007 by major categories of admission.

[7] In some cases, undocumented aliens living in the United States who are eligible for permanent residency cannot apply for adjustment of status in the United States and must return to their country of origin to apply for an immigrant visa.

[8] There are, for example, four categories for granting permanent residence based on employment for priority workers, professionals with advanced degrees or persons with exceptional ability, skilled or professional workers, and special immigrants, and various visa subcategories. Family-based visa categories include the immediate relatives of a U.S. citizen and the spouse or unmarried son or daughter of a lawful permanent resident.

[9] Immediate relatives include spouses, parents of citizens ages 21 and older, and citizens' unmarried children under age 21. See 8 U.S.C. §§ 1151(b)(2)(A)(i), 1101(b)(1).


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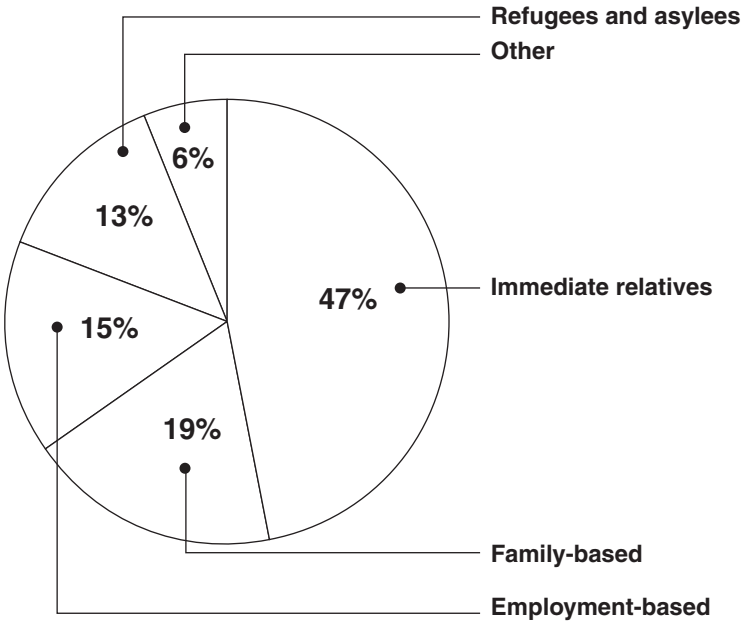
**Figure 2: Percentage of Aliens Granted Lawful Permanent Residence Status by Major Category of Admission, 2007**




Source: DHS's Office of Immigration Statistics.

Adjusting status to lawful permanent residency is a two-part process. First, in general, an eligible U.S. citizen or lawful permanent resident, called a petitioner, must file a petition with USCIS on behalf of the alien applying for lawful permanent resident status.[10] Generally, the petitioner can be either a relative or employer.[11] The purpose of this step in the process is for USCIS to determine if the relationship claimed between the petitioner—either as a family member or a prospective employer—and the

[10] Eligible U.S. relatives file a Form I-130 Immigrant Petition for Alien Relative and U.S. employers file a Form I-140 Immigrant Petition for Alien Worker. Certain categories of immigrants, such as special immigrant religious workers and battered or abused spouses and children of U.S. citizens or lawful permanent residents, and others may file their own petition (Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant) at this stage of the process. Other individuals may apply for certain kinds of immigration benefits, such as refugee status or asylum, which may lead to an application for lawful permanent residency.

[11] For U.S. citizens who are petitioning for a relative, the family member must be (1) a spouse, (2) a son or daughter, (3) a sibling, or (4) a parent. For lawful permanent residents, the family member must be (1) a spouse or (2) an unmarried son or daughter.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alien is valid. USCIS requires petitioners to include evidence that supports the claimed relationship, such as a marriage or birth certificate (for family-based applications) or evidence of a job offer and the alien's work qualifications (for employment-based applications). An adjudicator then reviews the information in the petition and the evidence submitted and makes a decision about the petitioner's eligibility to sponsor the alien intending to adjust status in the United States.

If USCIS approves the petition, the alien seeking lawful permanent residency in the United States must file with USCIS a form I-485, called an Application to Register Permanent Residence or Adjust Status, along with evidence supporting the applicant's eligibility, such as a birth certificate or diploma.[12] An adjudicator is to then review the information in the application and the evidence submitted, as well as the results of USCIS background checks, and make a decision about the alien's eligibility to adjust status.[13] Adjudicators at field offices generally interview aliens applying for a family-based adjustment of status. Employment-based applications to adjust status are generally adjudicated at a service center and the interview waived. Even though USCIS may determine that the relationship between the petitioner and the alien was valid, the alien may be ineligible for permanent residency under immigration law. USCIS tracks these applications and petitions in its Computer Linked Application and Information Management System (CLAIMS). Figure 3 provides an overview of the general process for adjudicating applications for lawful permanent residency.

[12]Aliens outside the United States who are seeking lawful permanent residency also need an approved petition, but the second step for them is to apply for an immigrant visa at the U.S. consulate in their current country of residence which enables them to seek admission to the United States as a lawful permanent resident.

[13] Section 212(a) of the INA describes general classes of aliens ineligible for admission to the United States. For example, an alien who has been convicted of certain crimes, who has engaged in or may engage in terrorist activity, or is likely to become a public charge is generally ineligible for admission, and therefore for permanent residency. Aliens initially denied permanent residency based on the filing of forms I-140 or I-360 can appeal the decision to USCIS's Office of Administrative Appeals.


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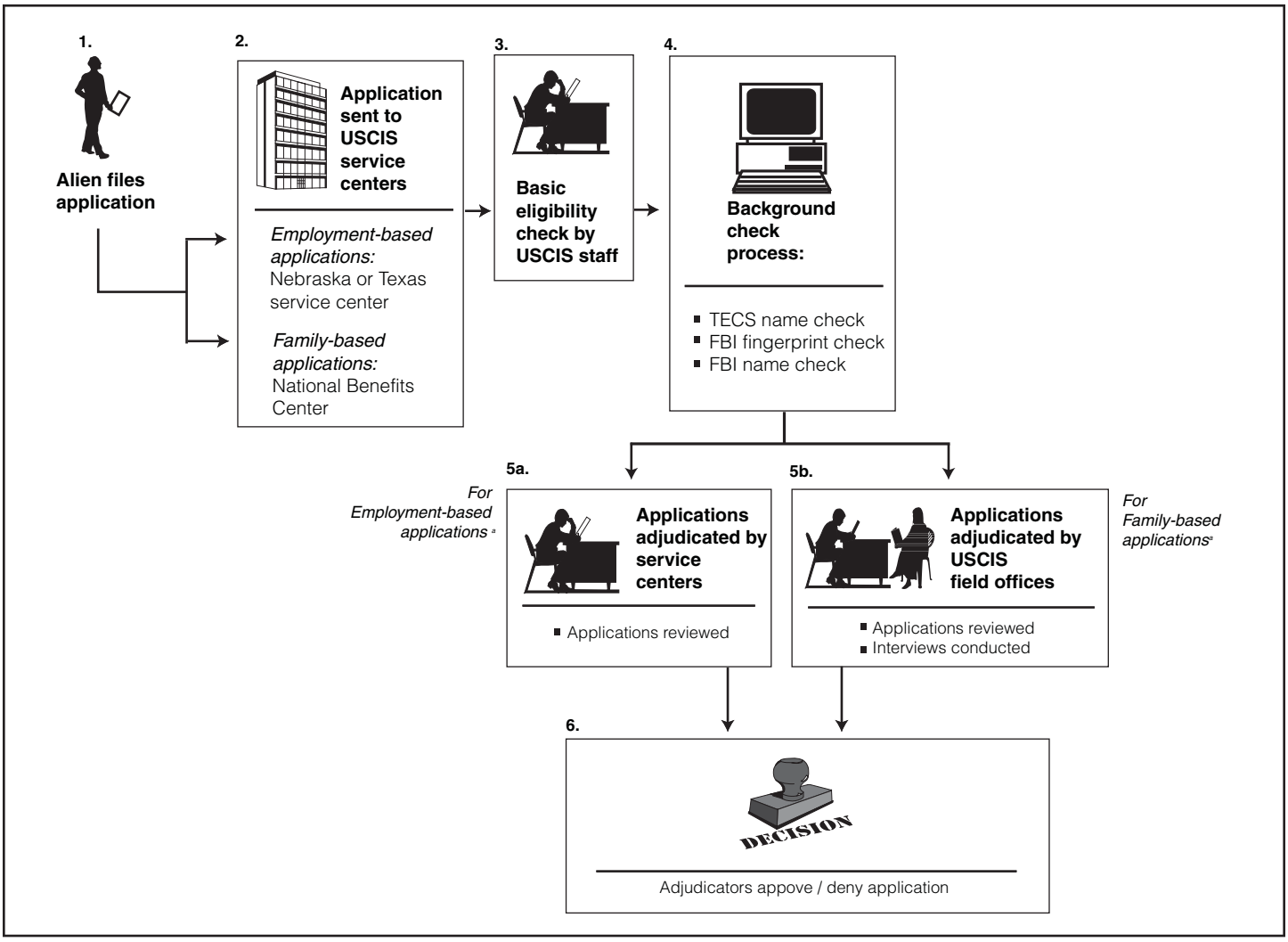
**Figure 3: Process for Adjudicating Applications for Adjustment of Status to Lawful Permanent Residence**




Source: GAO analysis of USCIS data.

[a]USCIS may determine that any applicant—including an employment-based adjustment of status applicant—is required to undergo an interview. However, some family-based applicants are granted interview waivers, such as children or parents of U.S. citizens, or Cuban nationals filing under the Cuban Adjustment Act.

As part of the process of adjudicating applications for lawful permanent residency, USCIS requests that the FBI conduct a name check against the FBI's administrative and investigative files to identify individuals the FBI has investigated due to national security or public safety concerns. In fiscal year 2007, USCIS requested the FBI conduct about 2.1 million name checks, including nearly 796,000 relating to adjustment of status applications. According to USCIS officials, nearly all FBI name checks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(over 99 percent) result in either no record of the individual in the FBI's files or the information contained in the files is not relevant to the permanent residency application. According to USCIS officials, 0.14 percent of all FBI name checks historically yield information about an applicant, and about 0.12 percent of these results yield criminal or national security-related information that may be pertinent to the adjudication.

In June 2008, the Department of Justice's (DOJ) Office of Inspector General (OIG) raised concerns about the quality of the FBI's name check process.[14] Specifically, the DOJ OIG reported that the algorithm used to match submitted names against the FBI's files was outdated and potentially ineffective, increasing the risks that submitted names were not accurately searched and matched against FBI files. The FBI agreed with the OIG's recommendations to improve the algorithm.[15]

If, however, any of the background checks (TECS, fingerprint, or FBI name check) indicate a potential national security concern, it is USCIS's policy to withhold the adjudication of the application until any national security concerns are resolved with the appropriate law enforcement or intelligence agency. While some background checks could indicate that an applicant has, or may have, criminal or national security issues, such information will not always render the applicant ineligible for the benefit. For example, inclusion on TSC's watch list does not automatically prohibit an individual from obtaining a visa, entering the United States, or adjusting status to remain in the United States.[16] After consulting with law enforcement or intelligence agency officials, USCIS decides whether or not to grant the benefit and accordingly makes an eligibility determination.

In 2006, USCIS embarked on a transformation of its business processes and technology aimed at increasing national security and integrity, improving customer service, and achieving operational efficiency. According to the USCIS Transformation Program's Concept of Operations

[14] U.S. Department of Justice Office of Inspector General, *The Federal Bureau of Investigation's Security Check Procedures for Immigration Applications and Petitions*, Audit Report 08-24, (Washington, D.C.: June 2008).

[15] We did not include an assessment of the quality of the FBI name check process as part of our review since the DOJ OIG had already begun its assessment.

[16] See GAO, *Terrorist Watch List Screening: Recommendations to Promote a Comprehensive and Coordinated Approach to Terrorist-Related Screening*, GAO-08-253T (Washington, D.C.: Nov. 8, 2007).


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announced in March 2007, the objective is to transform USCIS from a fragmented, paper-based operational environment to one that will use state of the art case management tools and adjudicate applications in a paperless environment. USCIS plans to change its business processes by, for example, obtaining biometrics from all individuals who petition or apply for immigration benefits to verify identity, something it does now only for asylum benefit applications. The operational concept calls for USCIS to link all individuals' transactions with USCIS based on biometrics enabling USCIS adjudicators to see all of a person's transactions with USCIS. The concept paper also calls for USCIS adjudicators to be able to directly access other automated systems, such as those of other government agencies, to verify information submitted by applicants. USCIS anticipates completing the transformation at the end of 2013 at an estimated cost of $545 million.

## Available Data Show That USCIS Has Identified Some Lawful Permanent Residence Applicants with National Security Concerns

Available data show that USCIS background checks identified individuals who were (1) KSTs, (2) associates of terrorists, (3) involved in providing material support to terrorists or terrorist organizations, and (4) agents of a foreign government involved in espionage. From March 2003 through December 1, 2007, FDNS received about 14,500 national security referrals for all application types. According to FDNS officials, about 10 percent involved individuals on TSC's watch list and the balance of these cases involved individuals who were not on the terrorist watch list, but whose background checks indicated other possible national security concerns, such as those having associations with known or suspected terrorists. USCIS identified these nonwatch list cases based on information placed in TECS by law enforcement and intelligence agencies, FBI checks of names in its investigative files, and through other referrals.

Terrorists and other individuals posing a threat to national security have applied for lawful permanent residency. At our request, USCIS provided summary data regarding lawful permanent residence applications with potential national security concerns by comparing information from CLAIMS and FDNS's national security data. These data showed that of approximately 917,000 applications for permanent residency filed from January 1, 2006, through May 31, 2007, 516 (about one-half of 1 percent) were referred to FDNS for national security reasons. Of these 516 national security referrals, USCIS identified 109 as KSTs on TSC's watch list and 407 were referred to FDNS for other national security reasons. According to USCIS officials, these non-KST cases included associates of KSTs, unindicted co-conspirators, terrorist organization members, persons involved with providing material support to terrorists or terrorist


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organizations, agents of foreign governments, and individuals involved in espionage.[17] USCIS denied or rejected 41 applications to adjust status to permanent resident, including 18 KSTs and 23 non-KSTS, and granted permanent resident status to 9 KSTs and 41 non-KSTs following resolution of the national security concern. Another 15 applications were either administratively closed or abandoned. The remaining 410 applications were still pending adjudication decisions as of August 2008.

In addition to identifying potential national security concerns from checking an alien's name against watch lists in TECS, name checks against the FBI's investigative files have uncovered individuals who raised national security concerns. We reviewed a random sample created by FDNS of FBI name check results provided to USCIS to ascertain the types of national security concerns identified during the name check process. We found that the FBI provided information to USCIS that these individuals

- had associated with terrorist organizations,
- were agents of foreign governments,
- were involved in criminal activities, or
- had engaged in espionage against the United Sates.

In addition, these FBI name check results included individuals whose names were mentioned in FBI national security investigations, but who were not subjects of the investigation or believed to be involved in other criminal activity. For example, as part of the 9/11 terrorist attack investigation, the FBI interviewed many individuals who were not involved in the 9/11 attack, but may have been able to provide the FBI with investigative information. Some of these individuals eventually applied for an immigration benefit and their name was matched against FBI files during the name check process.

While USCIS has some data on applicants with national security concerns, the data are limited because USCIS's CLAIMS system was not designed to capture and routinely generate reports on the extent, type, and nature of national security threats posed by applicants. For example, this system does not routinely provide statistics on the visa categories used (e.g., family- or employment-based applications) and whether the immigration

[17] According to FDNS, the status of a KST or non-KST may change over time by moving between these categories or a non-national security concern for a number of reasons, including the removal from or addition to the terrorist watch list.


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benefits were granted or denied. Such information could be useful to help identify the characteristics of applicants who could pose national security and terrorism-related concerns, and the avenues they may use to stay in the United States.

Therefore, to provide USCIS with more comprehensive data on those applicants who may pose a national security threat and those who try to obtain immigration benefits through fraud, FDNS is developing a data system called FDNS-DS. FDNS-DS is designed to collect data from applications referred to FDNS for reasons of national security and public safety as well as suspected fraud, and includes the disposition and resolution of these referrals. Currently, FDNS-DS's analytical capability is limited. For example, FDNS-DS cannot generate reports on how often and under which immigration categories individuals with potential national security concerns applied for lawful permanent residency. Also, FDNS-DS is not yet integrated into CLAIMS and therefore cannot track related adjudication decisions for these national security referrals. FDNS officials told us that they plan to have visa category and eligibility decision information automatically integrated into FDNS-DS, but the date for this is uncertain. These officials also said that by the middle of fiscal year 2009 FDNS-DS should have the capability to analyze national security referral data when USCIS completes other information technology improvements as part of its information technology transformation program. FDNS officials said that having an automated analysis capability will facilitate identifying trends in application types used, and strategies employed by individuals with national security concerns on a continuous basis. According to FDNS, this type of analysis will help identify those types of applications that may need additional scrutiny and whether USCIS adjudications procedures need strengthening.

## USCIS and the FBI Have Taken a Number of Actions to Improve the Timeliness and Usefulness of FBI Name Check Results

Of the three background checks—TECS query, FBI fingerprint check, and FBI name check—conducted on lawful permanent residence applicants, USCIS raised concerns about the timeliness and usefulness of FBI name check results and has taken several actions in conjunction with the FBI to address these issues. The number of pending FBI name check requests increased from about 236,000 in May 2006 to about 329,000 in May 2007, about a 40 percent increase. Also, the number of USCIS's FBI name checks requests pending more than 90 days increased 38 percent, from about 153,000 in May 2006 to about 211,000 in May 2007. As a result of having to wait for the name check results, USCIS could not adjudicate applications, resulting in some applicants waiting years before USCIS made a decision.


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In Spring 2007, USCIS began working with the FBI to develop solutions to improve the processing times for the name checks as well as the usefulness of the name check results provided to USCIS. As part of this effort, USCIS and the FBI recognized that additional staff were needed for researching FBI's investigative files and that FBI staff would benefit from additional training and guidance about which investigative files should be reviewed and what information was relevant to USCIS adjudicators for determining an applicant's eligibility.

In April 2008, USCIS and the FBI announced a joint plan with a goal to process 98 percent of all name check requests within 30 days and process the remaining 2 percent within 90 days by June 30, 2009. USCIS and the FBI have taken a number of actions to achieve these goals. The FBI has assigned additional FBI staff and hired contractor staff jointly funded by the FBI and USCIS out of recent fee increases by USCIS and the FBI[18] and from USCIS and FBI appropriations for fiscal year 2007 and 2008. Specifically, the FBI increased its USCIS-dedicated name check program staff from 50 to 61 and hired 290 contract staff to work exclusively on USCIS name check requests. The FBI also plans to improve its business processes and case management and file management systems that will allow electronic access to investigative files rather than the time consuming process of locating and reviewing investigative files manually. The FBI also plans to eliminate investigations of nonrelevant administrative files, for example, administrative files containing the names of government employees and individuals who may have had a background check performed for employment purposes. As a result, fewer names will require additional vetting. Table 1 shows the milestones FBI has set to eliminate the oldest pending name checks requested by USCIS.

[18] The FBI raised its name check fees effective October 1, 2007, and USCIS raised fees for processing immigrant benefit applications effective July 30, 2007.


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**Table 1: USCIS and FBI Joint Plan Milestones for Processing All Name Checks within 90 Days**

| Process all name checks pending more than: | By: |
|---|---|
| 3 years | May 31, 2008 |
| 2 years | July 31, 2008 |
| 1 year | November 30, 2008 |
| 6 months | February 28, 2009 |
| 3 months | May 31, 2009 |
| Process 98 percent of name checks within 30 days, and remaining 2 percent within 90 days | June 30, 2009 |

Source: FBI and USCIS.

The FBI has made significant progress in decreasing the overall number of pending name checks requested by USCIS. As of September 30, 2008:

- the total number of pending name checks decreased 90 percent, from about 329,000 in May 2007 to about 32,000,
- the number of name checks pending longer than 90 days decreased about 92 percent from about 211,000 in May 2007 to about 18,000,
- the number pending more than 2 years decreased 99 percent from about 24,000 in May 2007 to 46, and
- the FBI had eliminated all names checks pending more than 3 years.

On the basis of the progress to date, the Section Chief of the FBI Name Check Program told us that he is confident that the November 2008, February 2009, and June 2009 goals will be met.

To help the FBI provide more useful information for adjudicators in making eligibility determinations, USCIS has assigned staff to the FBI's Name Check Program office. On the basis of a review in 2004 of nearly 400 name check results provided to USCIS in formal FBI letterhead memoranda, FDNS found that, among other things, the information the FBI provided was often vague or not useful for adjudicators to determine whether or not an individual was eligible for an immigration benefit. Since February 2008, USCIS staff have participated in training FBI analysts to identify and provide information that USCIS adjudicators can use in making eligibility determinations. According to USCIS officials, this effort resulted in more detailed and relevant information being provided in letterhead memoranda summarizing the nature and extent of the national security and other public safety concerns.


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## USCIS Has Not Completed Actions Necessary to Address Identified Vulnerabilities

USCIS has taken actions to address vulnerabilities identified in one of its BFCAs, but has not completed the actions necessary to address the vulnerabilities identified in four of its other BFCAs. During 2005 and 2006, FDNS initiated six BFCAs and has taken some actions to address the findings in one of these related to petitions for religious workers. USCIS determined that no actions were necessary based upon the findings of the BFCA for the replacement of lost, stolen, or destroyed permanent resident cards (green cards). For the remaining four BFCAs, USCIS has not determined what actions are necessary to address the findings, nor has it established timetables for deciding on what actions to take and for implementing any agreed upon actions. Until USCIS takes these steps, the vulnerabilities FDNS identified in these BFCAs will persist, increasing the risk that ineligible individuals will obtain immigration benefits. Lack of verification of the evidence applicants and their petitioners provide is one of the vulnerabilities identified in these BFCAs and one that we reported on in 2006.[19] USCIS's standard operating procedures give adjudicators the discretion to decide when and under what circumstances they will check petitioner-submitted evidence against internal and external databases. The BFCAs have shown that adjudicators following these procedures have approved fraudulent petitions. Procedures that require verifying certain petitioner-submitted evidence under certain circumstances, where the BFCAs have indicated potential fraud, would help adjudicators better detect fraud and help USCIS maintain the balance between fraud detection and its customer service and production-related objectives. Finally, internal conspiracies and employee misconduct have compromised the adjudications process allowing ineligible individuals to receive lawful permanent residency. To address these internal vulnerabilities, USCIS's Office of Security and Integrity (OSI) is developing a systematic approach to identifying internal fraud and evaluating its internal fraud controls related to detecting and deterring such fraud.

[19] See GAO-06-259.


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## USCIS Lacks Timelines for Evaluating and Addressing Findings and Recommendations from Benefit Fraud and Compliance Assessments

*Standards for Internal Control in the Federal Government* call for agency managers to complete, within established time frames, all actions that correct or otherwise resolve the matters brought to management's attention.[20] In addition, internal control standards require that findings of audits and other reviews are promptly resolved. These standards also state that managers are to (1) promptly evaluate findings from audits and reviews, (2) determine proper actions in response to findings and recommendations for audits and reviews, and (3) complete, within established time frames, all actions that correct or otherwise resolve the matters brought to management's attention. Moreover, standard practices for program management call for specific milestones to be established to achieve results.[21] Standard practices for program management also call for assigning responsibility and accountability for ensuring the results of program activities are carried out.

As of July 2008, FDNS had conducted six BFCA's of immigration benefits that may lead to lawful permanent residency.[22] For each BFCA, FDNS selected a random sample of completed or in-process petitions and conducted activities, such as visiting sites, checking internal USCIS systems and other external databases, and reviewing administrative files to determine if any of the information that petitioners submitted was false. For each of these assessments, FDNS prepared a report on each of the assessments' findings, which in some cases has included suggested changes to regulations, policies, or procedures that could address systemic vulnerabilities found during an assessment. Table 2 summarizes the status and results of the six BFCAs.

[20] See GAO/AIMD-00-21.3.1.

[21] The Project Management Institute, *The Standard for Program Management*©, (Newton Square, PA: 2006).

[22] In addition, in September 2008 FDNS released its BFCA on the H-1B visa for nonimmigrant workers in specialty occupations, such as computer professionals, engineers, accountants, attorneys, or university professors and teachers. However, because the H-1B visa pertains solely to nonimmigrants, we did not include the results of this assessment in this report.


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**Table: 2 Status of Benefit Fraud and Compliance Assessments, July 2008**

| Benefit assessed | Initiation date | FDNS report date[a] | BFCA findings and status as of July 2008 | USCIS actions taken or planned |
|---|---|---|---|---|
| **Petition for religious workers** | Feb. 2005 | Final report issued Aug. 2005 | Identified 33 percent fraud rate. | Actions taken: Increased site visits and requirements to verify legitimacy of petitioning religious institutions.<br>Actions planned: Employ contract staff for site visits; proposed change in rulemaking to require institutions to petition for religious workers instead of applicant petitioning for self; established FDNS compliance review procedures to verify petitioner-provided information, including additional checks of law enforcement databases, targeted site visits, and electronic and telephone verifications. |
| **Application for green card replacement** | May 2005 | Final report issued Nov. 2005 | Identified less than 1 percent fraud rate[b] | FDNS recommended no changes and USCIS determined no actions were needed. |
| **Petitions for skilled and unskilled workers** | May 2005 | Final report issued June 2006 | Identified 11 percent fraud rate. | Actions planned: Assign FDNS staff to overseas offices to verify application information, such as whether the alien worker has the required education and/or skills. |
| **Petition for spouse** | Apr. 2006 | Draft report completed Mar. 2007 | Circulated for comment within USCIS in April 2007 and again in June 2008. | None to date. |
| **Petition for Yemeni relatives** | Mar. 2006 | Draft report completed June 2007 | Circulated for comment within USCIS June 2008. | None to date. |
| **Application for asylum** | Feb. 2006 | Draft report completed Sept. 2007 | Circulated for comment within USCIS January 2008. | None to date. |

Source: FDNS.

[a]USCIS issued public versions of the reports for the religious worker and green card replacement BFCAs in July 2006, but has not issued a public version of the skilled and unskilled worker BFCA.

[b]Of the 245 application files sampled, USCIS found one case of fraud. In this case, had the adjudicator compared the photo of the applicant with the photo stored in USCIS databases as required, USCIS would not have approved the application. On the basis of the assessment results, FDNS determined that its procedures for adjudicating applications for a replacement green card did not need to be changed.

USCIS has taken some actions to address vulnerabilities identified in its assessments of petitions for religious workers. In August 2005, FDNS issued its report on religious workers, finding that 33 percent of the


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petitions in its sample were fraudulent.[23] In some cases FDNS found that the religious institution cited on the petition did not exist or that the applicant was not in fact a religious worker. FDNS recommended USCIS strengthen its procedures for adjudicating religious worker petitions by verifying, prior to granting the petition, that the religious institution exists and that the applicant is in fact a religious worker. In addition, USCIS has proposed a regulatory change that would require a religious institution to file a petition for a religious worker. Under current law, an alien seeking to enter as a religious worker can "self-sponsor," that is, the alien does not need the religious institution to file a petition on behalf of the alien. Based upon the results of the assessment, USCIS changed its adjudications procedures in July 2006 to require additional systems checks, including examining public records to verify the legitimacy of the religious institution for which the applicant intended to work, as well as conducting site visits.

USCIS plans to take other actions it believes will help deter and detect religious worker fraud. USCIS officials told us in July 2008 that it planned to hire contract staff to conduct site visits to verify both the legitimacy of the religious institution as well as the applicant. In April 2007, USCIS issued a notice of proposed rulemaking that would, among other things, require religious institutions to file a petition on behalf of the immigrant and not allow an alien to petition for him or herself. USCIS anticipated issuing a final rule before the end of 2008.

While USCIS has taken some actions to address vulnerabilities found in the petition for religious workers, USCIS has yet to take action to address vulnerabilities identified in four other BFCAs. In June 2006, FDNS completed its report on fraud in petitions for skilled and unskilled workers. For these petitions, in general, the petitioner must be a legitimate employer with the ability to pay the alien the prevailing wage. Skilled workers must be aliens with at least 2 years of specialized training or experience. Unskilled workers can have less than 2 years of training or experience. Both skilled and unskilled workers must be coming to perform labor that is not temporary or seasonal and for which qualified workers are not available in the United States.

[23] FDNS sampled cases involving only special immigrant religious workers who can apply for permanent residency, not nonimmigrant religious workers who are not eligible to do so.


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Overall, FDNS found that 11 percent of the petitions in its sample were fraudulent, but FDNS believed the actual fraud rate was higher because FDNS's sample included only approved petitions. FDNS did not include in its sample those petitions that USCIS had denied or where the petitioner withdrew the petition. According to the FDNS report, the overall fraud rate reported would have been higher had the sample included petitions that had already been adjudicated and denied for fraud, but limitations in CLAIMS did not allow their identification and potential inclusion in the sample drawn.

Evidence of fraud that FDNS staff found included

- tampering or fabricating supporting documentation, or material misrepresentations within a document,
- misrepresentation of the alien beneficiary's qualifications, that is, the beneficiary did not have the required education or work experience,
- nonexistent employers, and
- failure of the employer to pay the alien the salary noted in the petition.

To address these vulnerabilities, FDNS recommended a number of enhancements to USCIS procedures for adjudicating petitions for skilled and unskilled workers, including the following.

- Perform a name and address check on the petitioner to help establish the legitimacy of the petitioner. Current USICS policy only requires record checks be done on the alien beneficiary.

- Conduct targeted site visits to verify the legitimacy and eligibility of both the petitioner and alien beneficiary including, for example, verifying the location of the employer and the employer's ability to pay the offered wage, as well as the alien beneficiary's credentials.

- Enable adjudicators to electronically e-mail or telephone the employer to verify that the employer filed the petition and intends to employ the alien beneficiary.

- Verify the work experience alien beneficiaries claim to have acquired outside the United States because their work experience is vital to determining their qualifications and therefore whether they are eligible for the benefit sought.

- Require the employer to notify USCIS or withdraw the petition when the position is no longer available, or when there is a change in employment. According to FDNS's report, many of the alien


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beneficiaries do not report to work for the employer, or the applications are for family members or friends. In these cases, the employer had no intent to hire the alien beneficiary and the beneficiary had no intent to work for the employer. According to FDNS's report, both were using the employment petition as a vehicle for the alien beneficiary to obtain lawful permanent resident status. According to FDNS, to close this loophole, a regulatory/statutory amendment would have to be made that requires an employer to notify USCIS every time the alien beneficiary leaves employment, or when the job offer is no longer valid. This notification would have to be performed before the alien beneficiary adjusts status to permanent resident.

- Require that the beneficiary be placed in a 2-year conditional resident status and requiring that the beneficiary remain employed by the petitioner in the stated capacity for a minimum of 2 years. If the beneficiary remains employed in the stated capacity during the 2 year time period, the conditions on their residence would be removed. If the beneficiary fails to report or remain on the job in the stated capacity, then the beneficiary would be subject to termination of status and removal from the United States. According to FDNS, this would require regulatory and statutory changes.

Although FDNS's June 2006 report recommended a number of proposed enhancements to address vulnerabilities in the process for adjudicating petitions for skilled and unskilled workers, USCIS has yet to take action. In July 2008, the NSRV Associate Director and FDNS Chief told us that USCIS had not taken any actions to address the findings and proposed enhancements made in FDNS's June 2006 report,[24] but could not explain why USCIS had not taken any action and had no set timelines for (1) deciding what actions to take, (2) identifying which USCIS components would be responsible for implementing these actions, and (3) establishing timetables for implementing these actions. Until USCIS decides what additional actions are needed to address the vulnerabilities related to petitions for skilled and unskilled alien workers, and assigns responsibility and establishes timetables for completing them, these vulnerabilities will persist, allowing ineligible applicants to continue to obtain lawful permanent residence.

FDNS has prepared draft reports summarizing the findings related to its three other assessments involving (1) petitions for alien spouses, (2)

[24] FDNS, however, plans to assign staff at overseas USCIS offices to assist adjudicators in the verification of aliens' educational or work experience claims.


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petitions for relatives from Yemen, and (3) applications for asylum. FDNS officials told us that in conducting these assessments, FDNS staff also identified vulnerabilities in USCIS adjudication procedures. According to NSRV officials, the vulnerabilities were generally similar to those reported in previous assessments: petitioners submitted false documents or made false statements on their petitions. For example, FDNS staff found that couples claiming to be married and living together were not living together or they had submitted false marriage and birth certificates to support their marriage claim. Some asylum applicants submitted false arrest and medical reports to support their claims of persecution. Some of the fraudulent applications detected during the BFCAs had been approved by USCIS adjudicators.

USCIS had not yet completed its review of the findings from these three BFCAs or decided on actions needed to address identified vulnerabilities, although the draft reports were made available by FDNS in March, June, and September 2007, respectively. In July 2008, FDNS officials told us that they were still collecting comments about what actions are needed to address identified vulnerabilities from the various USCIS offices that would be involved in implementing any proposed recommendations. However, USCIS senior management had not established timetables for collecting these comments, evaluating and making decisions about what actions are necessary to address the findings and any recommendations from these assessments, and implementing any needed actions as called for by internal control standards.

Not addressing these vulnerabilities can lead to further immigration benefit fraud as well as impede the opportunity for other legitimate applicants for lawful permanent residency. For example, there is a statutory limit on the number of employment visas that can be issued each year. Applicants who fraudulently obtain lawful permanent residency through employment limit the ability of legitimate applicants to obtain employment in the United States because the limit may have already been reached when the legitimate applicant applies, thereby denying legitimate applicants the opportunity to immigrate based upon their occupation, profession, or specialized skills. In addition, applicants who have fraudulently obtained lawful permanent residence can subsequently file applications to become U.S. citizens or petitions for their alien relatives, further perpetuating their fraud.

As part of its ongoing program to transform its business processes for adjudicating immigration benefits, in late 2009, USCIS plans to develop and implement technologies and new business processes for immigration


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benefits leading to permanent residency. The BFCAs could be an important source of information on risks USCIS faces from external fraud in evaluating what actions may be required to manage these risks and in deciding upon new business processes to address them. However, without established timetables for completing the fraud assessments—including reaching agreement on and implementing those changes that are needed in response to findings and recommendations—there is less assurance that decisions about USCIS's transformation efforts will benefit from those assessments.

NSRV recognizes that improvements are needed in the linkage between reporting BFCA findings and recommendations and USCIS's process for reviewing and evaluating BFCA findings and recommendations, and deciding what actions to take and implement. As part of its 2008 strategic plan, NSRV has an objective to enhance and expedite the current assessment review process in part by involving other USCIS components earlier in the process to help identify BFCA priorities and research approaches that would yield useful results and recommendations. However, without a timetable for promptly evaluating BFCA findings, deciding on what corrective actions are necessary, and implementing them, it will be difficult for USCIS to ensure that needed procedural improvements will take place that will preclude, for example, the granting of fraudulent petitions that may lead to lawful permanent residency.

## Lack of Requirements to Verify Petitioner-Submitted Evidence Continues to Leave USCIS Vulnerable to Fraud

In 2006, we reported that an obvious vulnerability to the immigration benefit system was the submission of false eligibility evidence.[25] USCIS procedures did not require the verification of any eligibility evidence for any benefit, despite the potential for verification to help mitigate vulnerability to fraud. We also reported that verification of such evidence—by comparing it to other information in USCIS databases, by checking it against external sources of information, or by interviewing applicants—is the most direct and effective strategy for mitigating this vulnerability. On the other hand, we reported that verifying all key information or interviewing all individuals would be impossible and that verifying applicant-submitted evidence represented a resource commitment that would need to be balanced with its customer service and production-related objectives. At that time, USCIS had just begun its BFCA program that was intended to identify ways to strengthen USCIS

[25] See GAO-06-259.


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procedures, including identifying the kinds of information that needs to be verified.

USCIS procedures, in general, do not require adjudicators to verify petitioner-submitted evidence. Guidance provided in USCIS's adjudicator's field manual instructs adjudicators to consider taking steps to verify information submitted by a petitioner—such as conducting internal research, requesting additional evidence, interviewing individuals, or requesting site visits—if they cannot decide whether to approve a petition based solely on their review of the evidence submitted. However, standard operating procedures for these petitions generally do not require adjudicators to take these additional steps. The decision as to when, and under what circumstances, to verify petitioner-submitted evidence is left to the discretion of the adjudicator.

USCIS guidance suggests a variety of sources, both internal and external, against which to check petitioner evidence. The Adjudicator's Field Manual states that USCIS's internal systems, such as CLAIMS, are some of the most valuable, yet often overlooked, sources of information to verify a claimed family relationship, such as a spouse. In addition, a 2003 USCIS report prepared by an independent consultant highlighted the need for additional checks to verify evidence submitted by immigration benefit applicants.[26] In particular, the report recommended that, at a minimum, USCIS check all family-based (I-130) and employment-based (I-140) petitions against records in CLAIMS to, among other things, identify previously filed petitions that could be an indication of fraud. According to FDNS, based upon BFCA findings, those adjudicators who choose not to verify information will be more vulnerable to approving fraudulent applications and petitions.

Verifying petitioner-submitted information prior to making a decision will reduce the likelihood of adjudicators approving ineligible applicants. As discussed earlier, FDNS's BFCA for skilled and unskilled workers found that 11 percent of the approved petitions were fraudulent and recommended a number of actions to verify petitioner-submitted information. In addition, ICE agents told us that much of the immigration fraud they encounter—such as applicants submitting false documents and lying on their applications—could be mitigated by USCIS adjudicators

[26] U.S. Bureau of Citizenship and Immigration Services, *Security Matrix Project Recommendations Report*, prepared by BearingPoint, (Washington, D.C.: May 16, 2003).


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checking internal and external databases to verify petitioner information. These agents suggested that USCIS adjudicators could use other agencies' databases, such as the State Department's Consolidated Consular Database (CCD),[27] and commercially available databases, such as AutoTrack, Choice Point,[28] and Lexis/Nexis,[29] to confirm certain information such as whether a petitioner and spouse reside at the same address or whether an employer petitioning for an immigrant worker appears to be a legitimate firm with a valid employment offer. Adjudicators at all USCIS's district and field offices and service centers can access these databases. According to FDNS officials, taking such steps to verify petitioner information led to FDNS officers identifying fraud in the BFCAs. For example, FDNS stated that commercial databases such as Choice Point and Lexis/Nexis can yield valuable information about the identity, residence, and duration of time an individual has been in the United States. By checking government and commercial databases and conducting site visits, FDNS officers determined that individuals claiming to be married were not, employers did not exist, and aliens did not have the education or skills they claimed.

Marriage fraud continues to be a problem, according to USCIS and ICE. In some cases, U.S. citizens have, in return for money, married and filed multiple petitions for several different aliens. For example, in one fraud investigation, ICE agents arrested a Miami woman in December 2007 who was charged with nine counts of bigamy. In January 2008, ICE arrested the woman's boyfriend for allegedly marrying four other women for profit so that the four women could obtain lawful status. According to these ICE agents, the investigation revealed that USCIS's personnel had not identified the prior petitions filed for the other claimed spouses. According

[27] The CCD stores information about U.S. citizens, immigrant visa applicants, and nonimmigrant visa applicants, including names, addresses, birth dates, race, identification numbers such as Social Security numbers and alien registration numbers, and country of origin.

[28] AutoTrack is a transaction-based service provided by Choice Point, Inc., that provides access to billions of publicly available current and historical public records. Choice Point is a commercial service that provides credentialing, background screening, authentication, direct marketing and public records services to businesses and nonprofit organizations, as well as information, analysis, and distribution solutions to advance the efforts of law enforcement, public safety, health care, child support enforcement, entitlement, and other public agencies.

[29] Lexis/Nexis is a commercial provider of business information solutions to professionals in a variety of areas, including: legal, corporate, government, law enforcement, tax, accounting, academia, and risk and compliance assessment.


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to these ICE agents, a check of USCIS's CLAIMS system would have revealed the previously filed petitions by these individuals. However, adjudicators are not required to verify petitioner-submitted evidence, including routinely checking CLAIMS to determine whether a petitioner had previously filed for another spouse.[30]

Verifying petitioner-submitted evidence has been shown to better detect and deter fraud. As discussed previously, in July 2006 USCIS changed its procedures and began verifying certain information submitted with religious worker petitions, such as whether the religious institution existed. According to FDNS, the number of petitions filed for religious workers decreased 21 percent from July 2006 to July 2007. In addition, over the same time period

- the approval rate of religious worker petitions fell from 76 percent to 44 percent, and
- the denial rate of these petitions, including petitions withdrawn, increased from 24 percent to 55 percent.

FDNS attributed these changes to the additional verification efforts taken by USCIS since USCIS had made no other changes in its procedures for adjudicating religious worker petitions.

USCIS's standard operating procedures allow adjudicators wide discretion on whether or not to verify petitioner-submitted evidence. The BFCAs have shown that adjudicators following these procedures have approved fraudulent petitions. The findings from the BFCAs have shown the kinds of petitioner-submitted evidence that may need to be verified, such as whether couples claiming to be married live together, employers exist, and whether aliens seeking employment have the education or skills they claim. Procedures that require verifying certain petitioner-submitted evidence under certain circumstances, where the BFCAs have indicated potential fraud, would help adjudicators better detect fraud and help USCIS maintain the balance between fraud detection and its customer service and production-related objectives.

USCIS recognizes the fraud vulnerabilities in its current adjudication procedures. USCIS's transformation program's concept of operations

[30] Procedures instruct an adjudicator to search CLAIMS only if the petitioner has not submitted evidence of being a lawful permanent resident or naturalized U.S. citizen. The purpose of this search is to verify the petitioner's status.


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describes the creation of a separate verification unit, apart from FDNS, to verify application information as part of a new business process model. According to USCIS officials, however, USCIS has not yet made a decision on whether to implement this new concept of operations as part of its new business model.

## USCIS Is In the Process of Addressing Internal Fraud Vulnerabilities

USCIS's adjudication procedures are also vulnerable to internal conspiracies that have allowed ineligible individuals to receive lawful permanent residency. For example, in June 2006, ICE arrested a USCIS adjudicator for conspiring with a business that prepared applications for permanent residency based on fraudulent marriages and documentation. According to ICE agents and USCIS officials familiar with the case, the adjudicator instructed applicants for permanent residency not to show up for their scheduled interview. According to USCIS field office officials, at the end of the business day, this adjudicator would find the application files of the applicants who were instructed not to show up for the interview that day, and process them himself. He would approve the application and order their permanent residency cards. As a result of this arrest, this particular field office has changed its procedures for assigning "no-show" cases to adjudicators. Instead of adjudicators being able to select which of these cases they will process, the field office now randomly assigns them to adjudicators. In another case, a former Supervisory District Adjudications Officer pled guilty to bribery of a public official who used brokers who were willing to pay for falsely made immigration documents. The former supervisor personally received $600,000 in bribes and the brokers together received more than $2,500,000.

USCIS does not know the extent of this vulnerability or if others like it exist in other offices. According to the Chief of USCIS's Internal Review Field Programs, within OSI, USCIS is in the process of developing a systematic approach to identifying internal fraud and evaluating its internal controls to prevent internal conspiracies and employee misconduct that contribute to vulnerabilities in USCIS's adjudication processes. For example, OSI convened a task force that analyzed the results of previous DHS Inspector General investigations for internal fraud schemes. On the basis of this analysis, the task force identified several major internal controls, such as access to approval stamps and controls over the creation of alien files, that it plans to evaluate. On the basis of the results of these reviews, OSI plans to determine if changes are needed to USCIS's internal control procedures and whether to recommend such changes to USCIS's senior management committee. In addition, OSI is


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developing work plans with major milestones and time frames for implementing recommendations approved by USCIS's senior management.

## Conclusions

USCIS initiated a series of Benefit Fraud and Compliance Assessments 3 years ago as the initial step toward mitigating or eliminating vulnerabilities in its processes for granting immigration benefits, including the benefit of lawful permanent residency. While four of these assessments—petitions for skilled and unskilled workers, spouses, and relatives from Yemen, and applications for asylum—have identified vulnerabilities that need to be addressed, USCIS has not established a roadmap with timetables for deciding what actions to take, what USCIS organizational units will be responsible for implementing those actions, and a timetable for implementing agreed-upon actions. Without such a roadmap, USCIS will not have reasonable assurance that the vulnerabilities will be addressed in a timely manner. Moreover, the vulnerabilities identified will persist, increasing the risk that ineligible individuals will be granted lawful permanent residency.

Current guidance that leaves decisions to verify petitioner-submitted evidence to the discretion of adjudicators is not effective for identifying and preventing fraud. USCIS benefit fraud and compliance assessments have revealed that USCIS has approved fraudulent petitions and that verifying petitioner-submitted evidence could have mitigated this fraud. While various USCIS internal systems, as well as external databases, can be valuable in verifying petitioner-submitted evidence, USCIS procedures giving adjudicators discretion on whether to check petitioner-submitted evidence does not require that these valuable resources be used. We recognize that it would be impossible to verify all petitioner-submitted information and that verifying submitted evidence represents a resource commitment that needs to be balanced with USCIS's customer service and production-related objectives. However, without requirements on what evidence for family- and employment-based petitions should be verified, this vulnerability will remain, allowing ineligible individuals to obtain lawful permanent residency.

## Recommendations for Executive Action

To help ensure that findings from USCIS benefit fraud and compliance assessments are acted upon, and to enhance USCIS's overall fraud detection efforts, we recommend that the Director of USCIS

- prepare a roadmap for each of the four outstanding benefit fraud and compliance assessments (petitions for skilled and unskilled workers,


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spouses, and relatives from Yemen, and applications for asylum) that delineates (1) timetables for deciding what actions to take, (2) which USCIS organizational units will be responsible for implementing those actions, and (3) a timetable for implementing agreed-upon actions; and
- modify adjudication procedures for family- and employment-based petitions to include requirements on what evidence should be verified.

## Agency Comments and Our Evaluation

We provided a draft of this report to DHS and DOJ for official comment. DHS and USCIS agreed with our recommendations and their comments are reprinted in appendix II. Regarding our recommendation to modify adjudication procedures to include requirements on what evidence should be verified, USCIS stated that it will modify adjudication guidance and procedures when the results of a BFCA indicates the need to do so. USCIS also provided technical comments, which we considered and incorporated where appropriate. DOJ had no comments on the report.

As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the Secretary of Homeland Security, the Secretary of State, the Attorney General, and other interested parties. The report also will be available at no charge on the GAO Web site at http://www.gao.gov.

If you or your staff have any questions concerning this report, please contact me at (202) 512-8777 or stanar@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix III.

Sincerely yours,

Richard M. Stana
Director, Homeland Security and Justice Issues


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# Appendix I: Objectives, Scope, and Methodology

This report addresses the following questions:

- What do available data show about the extent of national security concerns discovered during United States Citizenship and Immigration Service (USCIS) background checks for lawful permanent residence applications?
- What issues has USCIS encountered in its background check processes and what actions have been taken to resolve those issues?
- To what extent has USCIS addressed identified vulnerabilities in its adjudications procedures for permanent residency?

To determine what available data show about of the extent of national security concerns discovered during USCIS background checks for lawful permanent residence applicants, we obtained data on the number of permanent residence applications that were referred to USCIS's Office of Fraud Detection and National Security (FDNS) for national security reasons from January 2006, when FDNS began capturing these data, through May 2007, the date of our request for this information and related adjudication decision information about those applications. We interviewed knowledgeable agency officials about the source of the data and the controls FDNS had in place to maintain the integrity of the data and determined that the data were sufficiently reliable for purposes of our report. We also interviewed USCIS and Immigration, Customs, and Enforcement (ICE) officials about the extent to which individuals posing threats to national security or public safety applied for permanent residency under various immigration categories, such as religious workers and alien workers, and obtained statistics on national security cases referred to FDNS. Specifically, we obtained FDNS data for all benefit applications showing the extent to which cases referred to FDNS for national security reasons involved known or suspected terrorists (KST) and non-KSTs. To better understand the nature of the national security cases and the related information provided by the FBI about them—i.e., whether the individual was the subject of an investigation or was mentioned in association with another investigation, and whether the concern was related to national security or criminal activity—we performed a content analysis of a random sample of 100 FBI name check responses received from January through June 2007. FDNS originally selected this sample to determine how often the FBI name check provided unique information not available from the other two background checks. We also analyzed USCIS's policies, procedures and guidance for referring national security cases to FDNS, as well as eligibility requirements defined in section 212 of the Immigration and Nationality Act (INA) and deportability provisions defined in section 237 of the INA.


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To identify what issues USCIS has encountered in its background check processes and what actions have been taken to resolve those issues, we analyzed USCIS policies and procedures for conducting queries of the Treasury Enforcement Communications System (TECS), FBI fingerprint checks, and FBI name checks, as well as related interagency memoranda of understanding on requesting and conducting FBI name checks. We also analyzed USCIS data on pending FBI name check responses from May 2006 through September 2008 and assessed USCIS's and the FBI's joint plan to eliminate the backlog of pending name checks and improve the FBI's efficiency in conducting name checks. We interviewed knowledgeable agency officials about the source of USCIS's pending FBI name check data and the controls USCIS had in place to maintain the integrity of the data and determined that the data were sufficiently reliable for the purposes of our report. We discussed the actions the FBI and USCIS had taken and planned to take to improve the name check program with USCIS's Deputy Director, the Directors of USCIS's National Security and Records Verification Directorate (NSRV) and FDNS, and the Section Chief for the FBI's National Name Check Program. We also discussed background check issues with officials from the FBI's Office of General Counsel and the Foreign Terrorist Tracking Task Force; ICE; and the Department of Homeland Security's (DHS) Citizenship and Immigration Services Ombudsman.

To determine the extent to which USCIS was addressing vulnerabilities in its adjudication procedures, we collected and analyzed FDNS reports on benefit fraud and compliance assessments (BFCA) of applications for replacement permanent resident cards, petitions for religious workers, and petitions for immigrant employment benefits, as well as the proposed rule changes for filing petitions for religious workers published in the Federal Register. We interviewed FDNS managers responsible for administering the BFCAs, reviewed documentation outlining the BFCAs' design and implementation, and determined that the results were sufficiently reliable for the purposes of our report. We also obtained information on high-profile ICE investigations of immigration fraud and discussed with ICE agents familiar with these cases the potential vulnerabilities in USCIS adjudications processes that facilitate fraud. In addition, we analyzed current standard operating procedures and other guidance provided to adjudicators related to permanent residence applications and related petitions as well as related policy memoranda. We also compared how USCIS addressed the findings of its BFCAs with


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criteria in Standards for Internal Control in the Federal Government[1] and with standard practices in program and project management for defining, designing, and executing programs.[2] We also interviewed the Chief of the Internal Review Division and the Chief of Internal Review Field Programs within USCIS's Office of Security and Integrity (OSI) to determine the extent of internal fraud and actions being taken to mitigate internal fraud. Finally, we obtained USCIS's draft responses to recommendations in our previous report on immigration benefit fraud[3] and discussed the status of USCIS's efforts to address those recommendations with appropriate USCIS officials.

In addition to those officials mentioned above, we visited and interviewed officials in three USCIS service centers—the National Benefits Center, the California Service Center, and the Nebraska Service Center—to discuss their views on the extent to which individuals who pose threats to national security attempt to become lawful permanent residents, issues concerning background checks of individuals applying or petitioning for permanent residency, and vulnerabilities in current adjudications procedures. We also visited and interviewed officials in 4 USCIS field offices located in Atlanta, Georgia; Los Angeles, California; Miami, Florida; and New York, New York, for the same purposes. We chose these offices because together they adjudicated about 35 percent of all permanent resident applications in 2007, as well as nearly half of all family- and employment-based petitions (48 percent and 47 percent, respectively). Because we selected a nonprobability sample of service centers and field offices to visit, the results from our interviews with USCIS officials in these offices cannot be generalized to USCIS offices nationwide.[4] However, our interviews with officials in these offices enhanced our understanding of the extent to which individuals who pose threats to national security attempt to become lawful permanent residents, as well as issues with background checks and procedural vulnerabilities.

[1] See GAO/AIMD-00-21.3.1.

[2] The Project Management Institute, *The Standard for Program Management*©, (Newton Square, PA: 2006).

[3] See GAO-06-259.

[4] Nonprobability sampling is a method of sampling where observations are selected in a manner that is not completely random, usually using specific characteristics of the population as criteria. Because each unit in a population does not have an equal chance to be selected, it is possible for a nonprobability sample to contain a systematic bias that limits its ability to describe the entire population.


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# Appendix II: Comments from the Department of Homeland Security

U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

December 2, 2008

Mr. Richard M. Stana
Director
Homeland Security and Justice Issues
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Stana:

RE: Draft Report GAO-09-55, Immigration Benefits: Actions Needed to Address Vulnerabilities in Process for Granting Permanent Residency (GAO Job Code 440628)

The Department of Homeland Security appreciates the opportunity to review and comment on the draft report referenced above. The United States Government Accountability Office (GAO) recommends that the Director of the United States Citizenship and Immigration Services (USCIS) take two steps to help ensure that findings from USCIS benefit fraud and compliance assessments are acted upon and to enhance overall fraud detection efforts.

Specifically GAO recommends that USCIS prepare a roadmap for each of the four outstanding benefit fraud and compliance assessments (petitions for skilled and unskilled workers, spouses, relatives from Yemen, and applications for asylum) that delineates (1) timetables for deciding what actions to take, (2) what USCIS organizational units will be responsible for implementing those actions, and (3) a timetable for implementing agreed upon actions. USCIS officials agree with the recommendation.

GAO also recommends that USCIS modify adjudication procedures for family- and employment-based petitions to include requirements on what evidence should be verified. USCIS officials agree. When a Benefit Fraud and Compliance Assessment (BFCA) relating to an I-130 (Immigrant Petition for Alien Relative) and/or I-140 (Immigrant Petition for Alien Worker) petition is issued and modifications to the adjudicative processes are required, USCIS will modify its guidance and procedures to ensure compliance with the requirements outlined in the BFCA. Under documented special circumstances, officers may need to retain a certain amount of flexible discretion.

Technical comments have been provided under separate cover and should help clarify particular statements prior to finalizing the report.

Sincerely,

Michael E. McPoland
for Jerald E. Levine
Director
Departmental GAO/OIG Liaison Office


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# Appendix III: GAO Contact and Staff Acknowledgments

## GAO Contact

Richard M. Stana, (202) 512-8777 or stanar@gao.gov

## Staff Acknowledgments

In addition to the person named above, Michael P. Dino, Assistant Director, and E. Jerry Seigler, Analyst-in-Charge, managed this assignment. Carlos M. Garcia and Danielle Pakdaman made significant contributions to the work. Amanda Miller and Virginia Chanley assisted with design and methodology. Frances Cook provided legal support, John Brummet and Kate Brentzel provided expertise on overseas immigrant application issues, and Avrum Ashery and Lydia Araya developed the report's graphics.



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