

A I L A I S S U E P A P E R

INS REORGANIZATION

THE ISSUE: The Immigration and Naturalization Service (INS) is responsible for both the enforcement of our immigration laws and the adjudication of benefits applications for nonimmigrants and immigrants. The agency's dual mission of both enforcing the law and providing services has resulted in an inconsistent record in both areas. INS has been justifiably criticized for not providing timely and consistent service for applicants, and for not developing a consistent and effective system for enforcing our immigration laws. The INS has tremendous adjudications and naturalization backlogs, and does not consistently and professionally enforce immigration laws. However, Congress must also take responsibility for the unfunded, complicated, and often-conflicting mandates it places on the agency. Nearly everyone who deals with the INS agrees that it should be reformed. The question is what kind of reform will allow the agency to operate successfully.

BACKGROUND: Since 1990, when the Commission on Immigration Reform recommended breaking up the INS, several reorganization proposals have been introduced in Congress. The efforts that have gained the most support and have the most credibility are those that have focused on the need to separate, but coordinate, the enforcement side and the service side of INS, put someone in charge (a high-level person responsible for developing and implementing a uniform immigration policy), and provide adequate funding for adjudications.

This past November, the Administration issued a restructuring proposal that: splits immigration services and enforcement functions into two separate bureaus; maintains a strong leader at the top and a unified Office of General Counsel; clarifies the chain of command by eliminating the Regional Director and District Director positions; and establishes the Office of Juvenile Affairs, reporting to the Commissioner, to coordinate and standardize INS decision-making on issues affecting unaccompanied minors. The INS has begun to implement this plan, and set a completion goal of two to three years.

While AILA supports this plan, we disagree with the treatment of inspections and the placement of the office overseeing unaccompanied minors. The Administration's plan places inspections within a new division, the Border Patrol and Interior Enforcement Division, of the new Bureau of Immigration Enforcement. AILA supports housing inspections in the office of the person in charge (which in the Administration's plan is the Commissioner). Given that enforcement and adjudications come together in the inspections process, it is important that the person in charge oversee the exercise of this procedure and that inspectors receive training in adjudications standards and enforcement procedures. Further, although the creation of an Office of Juvenile Affairs is an important step toward recognizing the special needs of children, this office should be taken out of the INS altogether since it is charged with protecting the health and welfare of unaccompanied minors. While INS will still have authority to determine the legal status of these children, the agency is not a child welfare agency. There is an obvious conflict of interest in having the agency that is prosecuting immigration charges responsible for protecting a child's best interests in immigration proceedings.

Representatives James Sensenbrenner (R-WI), Chair of the House Judiciary Committee, and George Gekas (R-PA), Chair of the Immigration Subcommittee, introduced H.R. 3231, the Immigration Reform and Accountability Act. Representatives Sensenbrenner and Gekas introduced their plan without the support of the Bush Administration. H.R. 3231 would abolish the INS, replacing it with a new Agency for Immigration Affairs (AIA) within the Department of Justice. A presidentially appointed Associate Attorney General (AAG) would head the AIA. Offices under the AAG would include a policy advisor, a legal advisor, Office of Shared Services, Office of Ombudsman, and Office of Professional Responsibility

and Quality Review. The structure enunciated in the bill as well as the bill's language suggest that the AAG would have little authority or clout. H.R. 3231 vests real power in two bureaus within the DOJ, the Bureau of Immigration Services and Adjudications and the Bureau of Immigration Enforcement. Each Bureau would be headed by a Director and each would have its own General Counsel, Office of Policy and Strategy, Office of Congressional, Intergovernmental and Public Affairs, as well as field and operational offices. This structure would lead to conflicting legal strategies, public and budgetary policies, and information relayed to Congress and the general public.

H.R. 3231 also subsumes the Executive Office for Immigration Review (EOIR) back within the INS. It is unacceptable for the AAG to oversee and supervise the EOIR. The EOIR should remain independent of the immigration agency. Immigration Judges should be separate from the INS in order to preserve the integrity of the system. For example, in removal proceedings, the INS is a party appearing before an Immigration Judge. It would be unfair and improper to have the Judge and the Staff Attorney controlled by the same supervisor

AILA'S POSITION: AILA supports a reorganization of the INS that reflects the following principles:

- **Put Someone in Charge and Give that Person Clout:**

The federal government needs to have one full-time, high-level person in charge of the nation's immigration functions. Such authority vested in one person would improve accountability by fully integrating policy making with policy implementation, ensure direct access to high-level officials within the executive branch, and attract top-flight managerial talent. The new agency's local functions should be split, but the new agency's national leadership should not be.

- **Separate, but Coordinate, the Enforcement and Adjudication Functions:**

At the local level, district offices should be dismantled, separate immigrant adjudication areas and enforcement sectors should be created, and separate chains of command and career tracks should be established. This will lead to more clarity of mission and greater accountability from top to bottom within the two distinct functions that, in turn, will lead to more efficient adjudications and more accountable enforcement.

At the same time, any reorganization needs to require coordination between the two functions to ensure the efficient and consistent implementation of a unified immigration policy. Dividing local adjudication and enforcement operations will benefit both, but cost efficiencies and necessary coordination are best served by a set of discrete shared functions. The most important of these is the need for shared information systems. For example, personnel should be able to access the same databases so that an adjudication officer doesn't approve an application for someone who has an outstanding order of deportation, or a deportation officer doesn't remove someone who is applying for political asylum.

- **The Adjudication Function Needs to be Adequately Resourced:**

High fees, long backlogs, and a pattern and practice of unresponsive and rude service plague the adjudication function of the INS. In addition, congressional appropriations support enforcement activities, while user fees fund all INS adjudications. Any reorganization needs to ensure that adequate congressional appropriations are made available to support adjudications, improve customer service, and offset the costs of those adjudications for which no fee is charged or from which funds are diverted.

The INS premium-processing program is no substitute for direct congressional appropriations to supplement user fees. It is simply a program to get large business to underwrite additional resources for other functions. It provides the INS with a powerful incentive to keep non-premium processing at poor levels to generate demand for the premium-processing program.