Citizenship and Immigration Services Ombudsman

Annual Report 2005

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United States Senate
Committee on the Judiciary

United States House of Representatives
Committee on the Judiciary

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Homeland Security

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MESSAGE FROM THE OMBUDSMAN

Prakash Khatri
Citizenship and Immigration Services Ombudsman

This past year has been both challenging and rewarding for the Office of the Citizenship and Immigration Services Ombudsman. I can report with confidence that the future for individuals and employers seeking immigration benefits will be better than the past. This reflects the commitment of the Secretary and Deputy Secretary of the Department of Homeland Security (DHS) to create a world-class immigration benefits system and the hard work of thousands of public servants at U.S. Citizenship and Immigration Services (USCIS).

Our families, our economy, and our culture are strengthened by immigrants from around the world who come to this country to contribute to our society and to realize the American dream. As an immigrant and a naturalized citizen myself, I never take the honor of U.S. citizenship for granted. I am proud to lead the Office of the Ombudsman in its mission to ensure that the nation has an immigration benefits system that meets the needs and aspirations of employers and individuals – citizens and noncitizens alike – that strengthens our economy, and that takes full account of DHS' national security mandate.

In the past year, I have had the opportunity to meet with people around the country who share a vision of an immigration benefits system that is more efficient, more customer-service oriented, and more secure. I have spoken with employers seeking workers to expand their businesses, family members aspiring to sponsor relatives, lawyers and advocates proposing immigration reforms, and USCIS employees bringing their first-hand experience to bear on persistent bureaucratic obstacles. I have used the knowledge and insights from these encounters to develop the recommendations for change described in detail in this report.

The stakes for USCIS are high. President George W. Bush has proposed a new temporary worker program that will match willing foreign workers with willing American employers, when no U.S. workers can be found to fill the jobs. Since USCIS would play a central role in implementing any temporary worker program, an efficient, secure, and customer-centric system is an essential foundation for successful immigration reform.

During my two-year tenure, I have been privileged to work with dedicated public servants, including former DHS Secretary Tom Ridge, former Deputy Secretary Jim Loy, and former USCIS Director Eduardo Aguirre. With the vision and leadership of Secretary Michael Chertoff and Deputy Secretary Michael P. Jackson, I am convinced that progress will continue. The Ombudsman's office itself has evolved from fewer than a half-dozen public servants to a dedicated team of 24 professionals. Together, we are committed to working in partnership with DHS leadership and the new USCIS Director to achieve transformational improvements in the immigration benefits system.

I look forward to the day when I can report that the work of this office has been accomplished. We are not there yet, but with the progress of the past year and committed leadership to move forward, that day is truly foreseeable.

Prakash Khatri
Citizenship & Immigration Services Ombudsman

EXECUTIVE SUMMARY

This report reflects activities for the Office of the Citizenship and Immigration Services Ombudsman from June 1, 2004 through May 31, 2005. The statutory mission of the Ombudsman is to: 1) assist individuals and employers in resolving problems with U.S. Citizenship and Immigration Services (USCIS); 2) identify areas in which individuals and employers have problems in dealing with USCIS; and 3) to the extent possible, propose changes in the administrative practices of USCIS to mitigate identified problems.

The Ombudsman serves as a spokesperson and advocate for individuals and employers who have encountered problems with our immigration benefits system. The Ombudsman believes the best way to assist individuals and employers is to encourage efficiency and better customer service at USCIS; therefore, the office is aggressively focusing on improving the immigration benefits system by recommending solutions to systemic problems in USCIS processes.

The Ombudsman envisions an efficient, secure immigration benefits system with world-class customer service. The system would feature "up-front processing," which would: fully inform applicants of the documents and other evidence necessary to support the application; ensure that all proper documentation is filed with the initial application; allow applicants to be interviewed, if required, on the day of filing; and provide the immigration benefit within a few days of filing an application. In addition, applicants would file only one form and pay one fee per primary immigration benefit. An up-front process would limit the number of "interim benefits" – *i.e.*, work permits and travel documents – issued, which would decrease the number of ineligible individuals who receive immigration benefits.

To help achieve this vision, the Ombudsman worked closely with USCIS and DHS leadership this year to address several serious and pervasive problems such as backlogs and prolonged processing times, interim benefit issuance, antiquated information technology, lack of standardization across USCIS business processes, and inadequate training and staffing.

The Ombudsman made twelve formal recommendations to USCIS in this reporting year to address problems with our immigration benefits system. The agency adopted most of these recommendations which covered a wide variety of USCIS activities, including operational improvements, employee training, expanded policy guidance, and streamlined forms and fees.

In response to the Ombudsman's recommendations last year, USCIS implemented four pilot programs to address three areas of business operations, including green card renewal/replacement processing, employment-based immigrant processing, and family-sponsored immigrant processing. Of the four pilot programs, the Dallas Office Rapid Adjustment Pilot program best demonstrates the up-front processing concept as completion rates on green card applications increased substantially while the issuance of interim benefits decreased dramatically over the life of the pilot. This has convinced the Ombudsman that an up-front processing model can work within current USCIS capabilities, and that the agency can achieve improved application completion rates, enhance customer satisfaction, reduce the need to issue interim benefits, and substantially reduce unnecessary time-consuming work.

Over the past 23 months, Ombudsman Khatri visited over 65 USCIS facilities, including district offices, service centers, and other facilities, to understand the issues individuals and employers face when interacting with the agency. In addition, the Ombudsman and his staff held various meetings with representatives from community-based organizations, the immigration bar, and business organizations to identify problems and collect data.

The Ombudsman is tasked with assisting individuals and employers in resolving specific case problems with USCIS. The most common types of complaints from the public included issues such as the processing backlog and security check delays. The Ombudsman continues to evaluate USCIS' responses and work with USCIS on correcting many of the causes of these complaints.

By statute, the Ombudsman also has the responsibility and authority to appoint local ombudsmen around the country, and this year the Ombudsman initiated a pilot program to design and develop a workable local ombudsman office. The pilot program will establish personnel and support requirements, determine liaison responsibilities and limitations, and provide a controlled model for future local ombudsman office placements.

For the coming year, the Ombudsman plans to expand efforts to reach out to individuals who experience problems with USCIS and will continue to develop recommendations to resolve systemic problems. The Ombudsman also will continue to make recommendations to simplify the complex body of immigration law, regulations, and processes.

The Ombudsman looks forward to working with USCIS and DHS to build on successes of the past year to realize the goal of a more efficient, secure immigration benefits system with world-class customer service.

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I. INTRODUCTION

The position of Citizenship and Immigration Services Ombudsman ("Ombudsman") was established by the Homeland Security Act of 2002 § 452, 6 U.S.C. § 272 (2002). The Ombudsman reports directly to the Deputy Secretary of the U.S. Department of Homeland Security (DHS). Prakash Khatri was appointed as the Ombudsman on July 28, 2003.

This annual report is submitted pursuant to 6 U.S.C. § 272(c)(1) and covers the activities of the Ombudsman from June 1, 2004 through May 31, 2005. The Ombudsman's first annual report covered the period from July 28, 2003 through May 31, 2004.

A. Mission

The statutory mission of the Ombudsman is to –

- Assist individuals and employers in resolving problems with U.S. Citizenship and Immigration Services (USCIS);
- Identify areas in which individuals and employers have problems dealing with USCIS; and
- To the extent possible, propose changes in the administrative practices of USCIS to mitigate identified problems.

The Ombudsman serves as a spokesperson and advocate for individuals and employers who have encountered problems with our immigration benefits system.[1] The Ombudsman believes the best way to assist individuals and employers is to encourage efficiency and better customer service at USCIS; therefore, the office is aggressively focusing on improving the immigration benefits system by recommending solutions to systemic problems in USCIS processes.

The Ombudsman continues to work with USCIS and DHS headquarters to create more efficient, secure, and responsive methods for providing immigration services that respect the dignity of individuals and enhance our economy while simultaneously protecting us against those who seek to do us harm.

B. Vision

The Ombudsman envisions an efficient, secure immigration benefits system with world-class customer service. Such a system would allow qualified applicants to be processed as expeditiously as possible while simultaneously rejecting ineligible applicants. Prior to the filing

[1] "Immigration benefits" is the term used to describe the "services" side of the immigration system, versus the enforcement side. Primary immigration benefits include permanent residence ("green card"), nonimmigrant status, naturalization, asylum, etc. Secondary immigration benefits ("interim benefits") include work permits and travel documents.

of an application, applicants would be fully informed of the documents and other evidence necessary to support that application and the consequences of their failure to do so. Fully informing applicants would dramatically reduce the need to issue time-consuming and expensive Requests for Evidence (RFEs). It would also substantially reduce the ability of ineligible applicants to file skeletal applications merely to obtain interim benefits such as work permits and travel documents.[2]

Once applicants clear security checks and compile necessary documentation, they would receive their benefit within a few days of filing the application. This process, described by the Ombudsman as "up-front processing," would prevent backlogs, drastically reduce the need to issue interim benefits, and greatly improve customer service. Applicants would be required to file only one form and pay one fee per primary immigration benefit. Applicants would be interviewed, if required, on the day of filing. Finally, there would be an integrated case management system, which would allow USCIS to better track information about applicants, provide immigration status information to appropriate entities, and enable applicants to accurately determine the status of their applications.

The establishment of an efficient, secure benefits system would virtually eliminate the need for the Ombudsman's office.

C. Accomplishments

The Ombudsman has identified numerous problems with our immigration benefits system and has made recommendations to USCIS accordingly. Twelve formal recommendations were provided to USCIS during the reporting period.[3] These recommendations covered a wide variety of USCIS activities, including operational improvements, employee training, expanded policy guidance on naturalization, and streamlined forms and fees. In addition, the Ombudsman and his staff have worked closely with USCIS and DHS leadership to address certain pervasive and serious problems that, if solved, should greatly improve USCIS efficiency, dramatically improve customer service, and enhance national security.

In order to identify problems and collect data, the Ombudsman and his staff held a wide variety of meetings with representatives from community-based organizations (CBOs), the immigration bar, and business organizations. In addition, the Ombudsman visited over 65 USCIS facilities – including district offices, service centers, and other facilities. The purpose of these visits was to see first-hand what issues individuals and employers encounter with USCIS and to identify systemic problems that needed resolution. The success of the Office of the Ombudsman is due in part to USCIS' recognition of the Ombudsman as a catalyst for change. USCIS has provided the Ombudsman full and open access to USCIS facilities and personnel. USCIS leadership and workforce aspire to become a world-class customer service leader among government agencies. Their support for the mission of the Ombudsman and candor in all

[2] The Ombudsman defines interim benefits as any temporary benefit, including work authorization and travel documents, issued to an individual while his or her application for Adjustment of Status (green card application) is pending. *See infra* section II.B, for a complete discussion of interim benefits.

[3] The twelve recommendations and USCIS' response to them are discussed in greater detail *infra* section III.

discussions of the state of immigration benefits processing are the foundation for most of the Ombudsman's recommendations.

Additionally, the Ombudsman was tasked by Secretary Michael Chertoff and Deputy Secretary Michael P. Jackson to co-chair a comprehensive review of USCIS business operations. As a result of this review, many important issues have been brought to the attention of DHS leadership.

II. PERVASIVE AND SERIOUS PROBLEMS

A. Backlogs and Prolonged Processing Times

The vast majority of complaints and inquiries received by the Ombudsman's office from the public involve customer frustration with the amount of time it takes USCIS to complete a case, which creates and perpetuates the backlog. Processing delays negatively affect the immigration process in three major ways:

- **National Security/Public Safety:** Normally, individuals are permitted to remain in the United States while their benefits applications are pending. Some of these individuals may be national security or public safety risks. While they are awaiting decisions on their applications, they may be accruing equities in the United States which can make it more difficult to remove them from the country if their application is ultimately denied.

- **Economic Impact:** Every year, United States businesses seek the services of skilled and essential workers from other nations. Backlogs, coupled with statutory limits on the number of visas issued, deprive these businesses of the services they need, sometimes for many months. United States educational institutions depend on students, researchers, and instructors for knowledge exchanges and revenue. Processing delays deprive these institutions of access to foreign students, researchers, and instructors. These processing delays have caused businesses to reconsider the location of their conferences and even their new business sites, fearing that overseas workers cannot enter the United States in time.

- **Customer Service:** Processing delays for qualified immigration benefits applicants translate into lost employment opportunities, financial hardships, and unnecessary family separation.

The ultimate USCIS processing goal should be to complete cases as rapidly as possible while maintaining the integrity of the system. However, setting goals based on the current USCIS definition of "backlog" unfortunately results in USCIS falling short of this goal.[4] Even in

[4] According to the USCIS Backlog Elimination Plan (quarterly update), June 16, 2004, at 4, "The new definition in [USCIS' Backlog Elimination Plan] quantifies the backlog by basing the figure on the number of receipts during the previous number of months that corresponds with target cycle time (usually six) and the current pending count for a given application type. This calculated amount can then be used to assess and determine concrete production targets for backlogged application types and the resources necessary to meet those targets. Therefore, backlog is defined as

districts that are close to achieving the backlog elimination goals as defined by USCIS, large numbers of cases remain pending beyond six months – sometimes even years after the initial filing of the application.

It is quite possible – even probable – that in meeting its current backlog elimination goals, USCIS will not achieve its desired levels of customer service and efficiency. Applicants who should receive benefits in six weeks will not be satisfied with a process that delivers those benefits in six months. Nor will employers who need the skills of a foreign worker in three weeks be satisfied with a six-month process.

Premium Processing Service ("premium processing") demonstrates the demand for better customer service, the ability of USCIS to deliver it, and the public's frustration with existing processes. Premium processing allows petitioners to ensure a USCIS decision on their petition within 15 days by paying $1,000 in addition to regular filing fees.[5] If USCIS does not deliver a decision within 15 days, the premium processing fee is generally refunded. In FY 2004, USCIS collected $202 million in premium processing fees reflecting 202,000 petitioners for nonimmigrant worker petitions while collecting only $64 million for processing approximately 418,000 base petitions (form I-129). Clearly, there is a demand for timely, predictable service. The Ombudsman is optimistic that USCIS can make premium processing-type service the norm without expecting the customer to pay premium processing fees.

USCIS has already made substantial progress toward meeting customer expectations by piloting a successful green card processing program. In its Dallas Office Rapid Adjustment (DORA) pilot program,[6] USCIS has implemented an up-front application process that delivers decisions on Adjustment of Status (green card) applications in less than 90 days on 58 percent of the cases filed over the life of the pilot program.[7] For the most recent complete reporting period (February 2005), over 70 percent of the cases filed were approved in less than 90 days under DORA.

Both DORA and premium processing incorporate elements of up-front processing. The processes deliver quality service in a timely manner. As such, the Ombudsman strongly supports the national implementation of up-front processing. Today's applicant should benefit from new and innovative processes.

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the difference between pending and receipts for the number of months of target cycle time. (**Backlog = Pending – Last Six Months' receipts**). This new definition of backlog better reflects the idea that as long as USCIS is processing its receipts within the designated target cycle time, there is no backlog for those applications as the pending count only reflects cases within [USCIS] target cycle time."

[5] Premium processing was authorized by statute for employment-based petitions. *See* 8 U.S.C. § 1356(u). USCIS is currently offering premium processing for certain nonimmigrant worker petitions.

[6] For a discussion of the DORA program, *see* section III.B.5.

[7] *See infra* section III.B.5.b.

B. Interim Benefits

Most applicants who file for a green card in the United States also apply for and are granted what can be termed "interim benefits," specifically work permits and/or travel authorization documents that applicants receive only because they have a green card application pending.[8]

Many of the problems associated with the backlog are related to individuals seeking interim benefits due to delays in processing their adjustment of status applications. Adjustment of status is a process by which foreign citizens who are physically present in the United States can convert their immigration status (*e.g.* H-1B temporary workers) to permanent resident status, obtaining what is commonly referred to as a "green card." A green card entitles the holder to live and work indefinitely in the United States, to sponsor certain relatives to live in the United States, and to accrue residency necessary to qualify for naturalization. There are two primary avenues for obtaining a green card: 1) a qualifying family relationship (*i.e.* a spouse, parent, child, or sibling of a U.S. citizen or Lawful Permanent Resident); or 2) a qualifying employment relationship, which usually requires that an employer sponsor an employee for a job that a U.S. worker cannot fill.[9]

While it is essential that USCIS grant interim benefits to green card applicants who are awaiting final decisions, a substantial decrease in the need to issue interim benefits must be achieved by reengineering the green card application process to make it more efficient and less prone to fraud.

A new approach to adjudicating green card applications is needed to reduce the backlog, prevent USCIS reliance on fees from interim benefits, and prevent exploitation of the system by unscrupulous persons who file frivolous applications in order to secure work permits. Potential proposals to accomplish these goals include:

- Processing of green card applications in a few days (less than 90 days), which would eliminate the need to issue the vast majority of interim benefits; and

- One fee and one form for a green card and any necessary interim benefits.

[8] Pursuant to 8 C.F.R. § 274a.12(c)(9), a person whose green card application is pending is entitled to an employment authorization document (commonly referred to as a "work permit") which is effective for one year. However, if USCIS fails to adjudicate the application for the work permit within 90 days, the applicant is granted a temporary work permit valid for 240 days. *See* 8 C.F.R. § 274a.13(d). A grant of Advance Parole allows certain green card applicants to travel abroad and re-enter the United States while the application is pending without abandoning the application. *See* 8 C.F.R. § 212.5(f).

[9] Alternative avenues to obtaining a green card are through one of the humanitarian programs – refugee or asylee – or special programs like the Diversity Visa (Lottery) program.

1. Interim Benefits and the Backlog

The current green card application process is highly susceptible to exploitation by unscrupulous persons and ineligible applicants seeking interim benefits.[10] Interim benefits may be issued even though no *prima facie* determination as to the applicant's eligibility for a green card has been made.[11] Consequently, unscrupulous individuals can take advantage of the backlog by filing for a green card merely to receive the interim benefits, not necessarily the green card itself. For example, an applicant who claims to be married to a U.S. citizen but whose marriage is not *bona fide* could apply for a green card and, while his application is pending, receive interim benefits even though he is not actually eligible for a green card. With a work permit, a person can obtain a Social Security number, a driver's license,[12] secure credit, and provide evidence of both identity and employment eligibility to an employer.

Figure 1: Work Permit Equals Drivers License Plus Social Security Card

Green card application processing times in some jurisdictions are so lengthy that applicants can receive three or more work permits prior to the adjudication of their green card application. For example, the USCIS District Office in New York City is currently interviewing green card applicants who filed their applications in December 2002. An applicant who filed in December 2002 would likely have received a work permit in March 2003, March 2004, and March 2005, before his or her eligibility interview.

Despite USCIS efforts to reduce the number of pending green card applications, approximately 750,000 remain pending as of April 2005. As a result, the demand for interim benefits will continue.[13]

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[10] For fiscal year 2004, USCIS reported a nationwide green card application denial rate of approximately 20 percent. Most of these ineligible applicants received interim benefits while awaiting adjudication of their green card application. In some jurisdictions, the denial rate was much higher. For example, in New York City, the green card application denial rates in 2001, 2002, 2003, and 2004 were: 43.3 percent, 31.5 percent, 47.6 percent, and 39 percent respectively. Under DORA, however, the denial rate was much lower; only 3 percent (199 of the 6,626 cases) processed through March 4, 2005 were denied.

[11] USCIS performs a preliminary review of each application by completing an inventory of documents filed. The Office of the Ombudsman asserts that a more thorough review should be performed at the time each application is received.

[12] The recently enacted REAL ID Act does not change this situation. The law requires all states to verify lawful immigration status before issuing driver's licenses to non-citizens and work permits issued as a result of pending green card applications are accepted as evidence of lawful immigration status. *See* REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231, 302, at § 202(c)(2)(B). Because certain states do not currently have such a requirement, the REAL ID Act may inadvertently create an incentive for undocumented foreign nationals in these states to file frivolous green card applications and thereby reap the rewards of interim benefits (*i.e.* a valid driver's license) for many years before adjudication of their green card application.

[13] *See* appendix for charts which depict this concept in more detail.

The most recent USCIS report on its Backlog Reduction Plan stated that the completion targets for green card applications and work permits have actually been reduced for FY 2005 and FY 2006.[14] According to the report, these completion targets were reduced to reassign staff to work on naturalization applications.[15] Historically, USCIS has redistributed resources between benefit types to address spikes in case volume. This practice has resulted in a virtual "see-saw" effect in which reductions to backlogs for green card applications at district offices simultaneously result in backlog increases for naturalization applications at district offices and vice versa. Clearly an optimal business model would allow both backlogs to be reduced simultaneously.

2. Efficiency Challenges in Green Card Processing

At the beginning of FY 2004, USCIS had 957,714 pending green card applications. In FY 2004, USCIS received an additional 525,032 green card applications. Most of these applicants received work permits.[16] Based on the Ombudsman's estimate, two-thirds of all work permit applications (1.1 million) in FY 2004 were received from pending green card applicants. Additionally, these same applicants also accounted for 310,000 travel document applications. Clearly, the ability to adjudicate green card applications and other types of applications would have increased dramatically if USCIS did not have to process these 1.4 million interim benefit applications. By eliminating the customer's need for interim benefits, USCIS could shift resources to processing green card applications, eliminate the existing backlog, and ensure that a new backlog does not develop.

As noted, if green card applications were adjudicated within a few days, there would be virtually no need for interim benefits. Based upon the success of the Dallas Pilot Program,[17] such a process should:

- Reduce the amount of time it takes for an applicant to receive his green card; and
- Allow USCIS to reallocate substantial resources currently utilized to issue interim benefits and maintain applications of persons who are not eligible for a green card.

A major obstacle to issuing green cards within a few days is that security checks are often not completed in a timely manner.[18] The current process of conducting security checks after an application has been filed creates substantial additional burdens on USCIS since it must maintain these applications while security checks are pending. Furthermore, since key security checks are conducted by other agencies, USCIS has little control over the amount of time necessary to conduct all security checks required prior to issuing a green card. Another obstacle to USCIS' ability to rapidly adjudicate these cases is that many applications are accepted for processing without all necessary supporting documents.

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[14] USCIS Backlog Elimination Plan (quarterly update), Mar. 16, 2005, at 2.

[15] *See id.* at ii (Message from the Director).

[16] DHS Office of Immigration Statistics estimates that over 85 percent of all green card applicants apply for work permits.

[17] *See infra* section III.B.

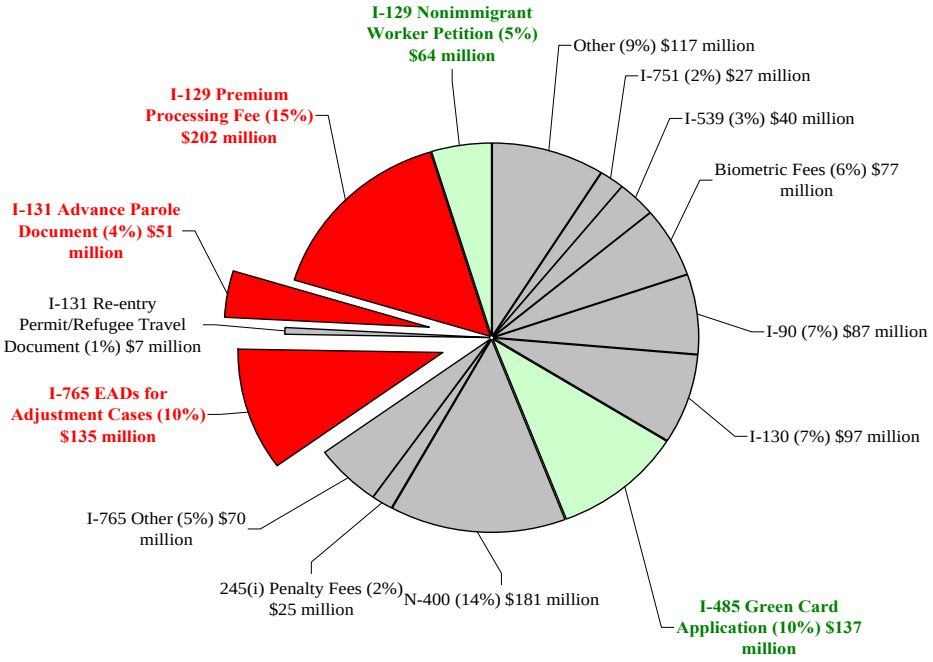
[18] *See id.*

The Ombudsman advocates up-front processing, which would allow applicants to file applications, provide biometric data (fingerprints and photographs), and undergo basic eligibility interviews on the same day. Up-front processing will dramatically reduce processing times and reduce the need to suspend processing for USCIS to seek additional supporting documents from the customer.

3. USCIS Fee Structure

USCIS is hampered by a funding structure that prevents it from providing the most efficient method of service due to a need for revenue.[19] USCIS is primarily a fee-based organization; therefore, a reduction in the filing of interim benefits will significantly impact USCIS' budget. The Office of the Ombudsman estimates that approximately 14 percent of USCIS revenue in fiscal year 2004 was generated from applications for interim benefits.[20]

Figure 2: USCIS Fee Revenue Chart for Fiscal Year 2004[21]



[19] For example, despite the fact that USCIS can issue interim benefits that would be valid throughout an extended application period, USCIS rarely does. USCIS issued an interim rule on July 30, 2004 to eliminate the need to file multiple applications and pay multiple fees, "thereby benefiting the aliens and reducing [USCIS] workload associated with yearly EAD [Employment Authorization Document or "work permit"] issuance." Employment Authorization Documents, 69 Fed. Reg. 45555, 45556 (July 30, 2004). Absent discretion allowed under this interim rule, USCIS issues work permits valid for one year under 8 C.F.R. Part 274a, thus creating additional work and expense.

[20] Based upon available data, the Ombudsman estimates that approximately two-thirds of I-765 revenue is attributable to work permit applications for persons who are awaiting green card processing (10 percent of total USCIS revenue in fiscal year 2004) and most I-131 applications for Advance Parole are attributable to green card applications (4 percent of total USCIS revenue in fiscal year 2004).

[21] In realizing maximum efficiency, USCIS could lose up to 29 percent of its revenue – 14 percent from interim benefits applications and approximately 15 percent from premium processing fees. The total of the two I-765 segments reflect the amounts reported by USCIS. In figure 2, the I-765 figure has been divided in order to reflect the Ombudsman's estimates of the I-765 categories attributable to green card applications.

Any alteration of the green card application process must include a plan for replacing necessary lost revenue in order to fund basic operations.[22]

A proposed solution is to set one fee for the filing of a green card application - this fee would cover the granting of an interim benefit, if necessary. Eliminating a separate fee for interim benefits may provide an added incentive to USCIS to process green card applications more efficiently, since USCIS would not receive revenue from interim benefits. The single fee would be set to cover the costs of processing the green card application. While the initial cost to the applicant may be higher, in most cases the applicant will pay less for the benefit in the long run, only have to file one form, and receive a green card more quickly.

Figure 3: Potential Cost Savings to a Typical Green Card Applicant under Existing Versus Future Processing with Current Fee Structure

Form	Future Process (Less Than 90 Days)	Current Process (Cumulative Totals)		
		<1 Year	1-2 Years	2-3 Years
I-130 Petition (Family) or I-140 Petition (Employment)	$185*	$185*	$185*	$185*
I-485 Application (Green Card)	$315	$315	$315	$315
I-765 Application (Work Permit)	No Need**	$175	$350	$525
I-131 Application (Travel Document)	No Need	$165	$330	$495
Fingerprinting	$70	$70	$70	$70
Totals:	**$570**	**$910**	**$1,250**	**$1,590**

*The current fee for the I-140 Petition is $190 and is therefore $5 greater than the I-130 petition fee of $185.
** The Office of Immigration Statistics estimates that approximately 85 percent of green card applicants apply for this benefit.

C. Untimely Processing and Systemic Problems with Employment-Based Green Card Applications

There are significant issues with USCIS' timely processing of employment-based immigrant visa applications. Although there is a statutory annual allotment of 140,000 employment-based immigrant visas, the number of green card applications filed with USCIS in recent years dramatically exceeded the annual immigrant visa cap.[23] These new filings add to the backlog because USCIS has not been able to adjudicate cases equal to the volume of available visas. This situation has resulted in an ever-increasing inventory of green card applications which further increases customer demand for interim benefits.[24] In the future, this

[22] Certain USCIS operations and benefits programs do not generate fee income and are currently supported by a portion of the fees collected from applications for other benefits.

[23] While USCIS is unable to provide exact data, the data available indicates that USCIS service centers received 187,583 employment-based green card applications in FY 2001, 221,223 applications in FY 2002, 225,897 applications in FY 2003, and 159,873 applications in FY 2004.

[24] *See* section II.B, Interim Benefits, *supra*.

backlog may be compounded by additional filings stemming from the Department of Labor's new streamlined labor certification program, which in many cases is the first step before an employment-based green card application can be filed with USCIS.

The Department of State (DOS) administers the 140,000 employment-based visa slots each year, allocating them as necessary to both USCIS for stateside processing and to U.S. embassies overseas. When it appears that demand in a particular category will exceed the supply of visas available for that year, DOS will establish cut-off dates for new filings in that category. In contrast, when there is a sufficient supply of visas in a particular category to meet demand, there is no limit on new filings and the category is considered "current." However, DOS gauges demand based on the number of cases that are actually *approved* during the course of the fiscal year, not on the total number of cases that are pending. Thus, when USCIS processing of employment-based cases does not yield sufficient approvals to project that the annual cap will be met, DOS is unable to impose a cut-off date and new filings may continue.

Employment-based visas that are not used in a fiscal year are shifted (or "recaptured") the following fiscal year into the family-sponsored visa categories under a complex statutory formula. While this concept is intended to recapture unused visas, in reality, this process of recapturing visa numbers between the two categories, coupled with USCIS processing of employment-based visa applications below DOS projections, has resulted in the loss of thousands of employment-based visas under the formula over multiple years. Between FY 2001 and FY 2004, over 141,000 employment-based immigrant visa numbers were unused.[25] This number effectively represents an entire year's supply of employment-based visas. It is ironic that many thousands of employment-based immigrant visas simply evaporated while thousands of applications sat idle and generated demand for interim benefits. U.S. citizens and businesses had legitimate expectations of visa availability only to have them lost to delays and processing problems.

To make up for the visa numbers lost in this process, Congress provided 180,000 additional employment-based visas under the American Competitiveness in the Twenty First Century Act of 2000.[26] However, USCIS was not able to meet the increased level of production necessary to process and approve 180,000 additional applications so that many of these numbers remained unused until the current fiscal year.

The Ombudsman commends USCIS for its recent efforts to reduce the pending employment-based green card applications by rapidly processing pending cases at the four service centers due in part to concerns raised by the Ombudsman regarding the loss of available visa numbers. In recent months, USCIS has increased the processing of applications for employment-based green cards as much as fourfold per month. This rapid processing has

[25] This figure (141,000) is based on DOS figures that include employment-based visas that were allocated by statute but unused to support an adjustment of status application or immigrant visa. Employment-based visas lost, by year, were: FY 2001—5,553; FY 2002—none; FY 2003—88,515; FY 2004—47,297.

[26] *See* Pub. L. No. 106-313, 114 Stat. 1251. In addition, recently enacted emergency supplemental appropriations provide for an additional 50,000 employment-based visas for the Department of Labor's Schedule A occupations, which primarily consist of nurses and physical therapists. *See* Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, Pub. L. No. 109-13, 119 Stat 231.

resulted in the establishment of visa cut-off dates for certain categories of employment-based immigrant applicants restricting certain country nationals from filing green card applications. However, because of the inability to effectively coordinate with DOS, USCIS has continued to accept thousands of new applications each month while continuing to maintain large numbers of pending applications at its offices which far exceed available visas. The Ombudsman has raised this issue with USCIS and DHS leadership, and efforts to address issues of efficiency and customer service are ongoing.

D. Background and Security Checks

The purpose of having security checks of applicants for immigration benefits is to: 1) identify security and public safety risks and deny benefits to those who are not qualified, and 2) notify appropriate law enforcement and intelligence agencies about persons of potential interest.

Although the majority of these checks are resolved within hours or days of initiation, a small percentage that do not clear on a timely basis represent a substantial and problematic workload. In some cases, applications may be approved despite initial security check "hits"[27] – either because they pertain to a different individual with a similar name or because the underlying information is not disqualifying. While most security check hits prove to be harmless, it is important to identify quickly those relatively few cases of genuine law enforcement or national security interest. However, resolving hits is a time-consuming process not completely controlled by USCIS. To date, the responsible agencies have allocated insufficient resources to resolve the hits. The Ombudsman's office is continuing research into how this crucial process can be both streamlined and improved.

There are a variety of security checks, each performed according to specific sets of rules. USCIS receives security check results in varying forms. Moreover, the results are valid for varying periods, and require different USCIS actions. The variety of checks and the rules concerning validity and use of the results create a confusing set of sub-processes within the immigration benefits process.

USCIS faces a challenge in accommodating the various security checks within a cumbersome adjudications process. All checks must be complete and current before an officer can make a decision on an application. Due to the varying validity periods and initiation processes, it is not unusual for the results of one check to expire while waiting for results on another check. Compounding this problem is the fact that the information provided to USCIS as a result of the checks is often stale, leaving USCIS with the job of resolving a hit that is no longer relevant. Additionally, various agencies within DHS and other federal departments have different requirements and criteria for similar security checks. It is necessary to standardize security check requirements throughout DHS and the federal government so that USCIS can provide more realistic processing timeframes to customers without compromising law enforcement needs and investigations.

[27] "Hit" refers to a positive response to a security check query. It is important to note that a hit does not necessarily relate to the applicant or petitioner. Some checks are based on names, others on fingerprints.

Not only do delays in processing times require additional security checks when they expire, but each additional check adds extra financial burdens to USCIS. As a non-law enforcement agency, USCIS must pay law enforcement agencies to conduct the checks. Currently, applicant fingerprints are archived, yet are not retrievable. Therefore, re-fingerprinting is necessary if the checks expire. Furthermore, USCIS does not have access to a "wrap-around" feature which would enable it to obtain automatic updates on subsequent criminal history for those on whom a query was previously requested.

E. Information Technology Issues

Successful service-oriented businesses in the twenty-first century employ the most efficient information technology (IT) systems available. However, USCIS IT systems do not support integrated and efficient business processes; they are based on IT approaches that are decades old. As a result, customer service is compromised.

Present USCIS systems are form-centric—they track paper and files. Adoption of a person-centric system—one that documents an individual's progress through the process—must be considered in order to improve customer service while simultaneously enhancing national security and public safety. Only a person-centric system will allow USCIS to rapidly update its information about the individual's employment, address, family status, etc., enhancing both security and processing concerns.

Today, USCIS depends on antiquated "stove piped" information management systems that do not share data and are extremely expensive to modify. The Computer Linked Application Information Management System (CLAIMS) versions 3 and 4 represent the primary case management system for USCIS which tracks forms as opposed to people. CLAIMS 3 and CLAIMS 4 are proprietary and now antiquated systems that were developed and deployed by a contractor in the early 1990s. Accessibility to these information management systems is limited to certain staff at certain offices, making information incomplete and often inaccurate. As such, USCIS does not possess a real-time case management system accessible to all USCIS employees.

USCIS also relies on the National File Tracking System (NFTS)—a file management system that does nothing more than track the history of a file. This system offers no information on the status of any applications. Furthermore, this system does not take account of the fact that a single case file may have multiple parts, increasing the likelihood that parts of a case file may be misplaced or lost.

More important than case and file management is the analysis and use of information collected from law enforcement and security databases. As discussed in part D of this section, USCIS conducts security checks to determine whether an individual is a security or public safety risk. Basically, these checks are performed to determine:

- History of criminal activity,
- Intelligence or national security interest, and
- Current law enforcement interest.

Beyond the basic battery of security checks, others may be performed depending on information obtained from the above checks or from the applicants themselves. These checks involve a variety of nonimmigrant information systems, immigration court systems, immigration enforcement systems, and others.

The Ombudsman supports the USCIS initiative to upgrade the USCIS information management architecture. However, he suggests the exploration of existing "off the shelf" information management systems widely used for similar applications in the private and public sector. Any information management system must enhance and streamline USCIS business processes rather than perpetuate duplicative and inefficient processes.

F. Limited Case Status Information Available to Applicants

Lack of effective communication between USCIS and customers remains a pervasive and serious problem. Concerns in this area include: 1) customer access to a USCIS official with knowledge of the individual case; 2) whether the information provided to customers by USCIS is accurate; 3) whether the information available is sufficiently detailed to answer a specific inquiry; and 4) an apparent practice of giving minimal information in response to customer inquiries.

This issue was also identified by the Ombudsman in his 2004 Annual Report to Congress, which noted:

> Aggravated by inordinate processing periods, individuals and employers alike are frustrated by the limited availability and accessibility of case status information…Customers resort to generating numerous telephone calls to USCIS and/or making frequent visits to USCIS facilities and finally opt for congressional assistance in determining the status of pending cases.

Throughout the year, USCIS has taken a number of positive technology-oriented steps – most notably national implementation of the InfoPass program – to address communication issues between customers and USCIS offices. However, the National Customer Service Center (NCSC) and the case status service online have not been as effective as anticipated.

> **InfoPass**. InfoPass, an online USCIS appointment system, has added a valuable service for some applicants by allowing them to secure an appointment time with a USCIS district office representative.[28] However, due to an insufficient capacity to meet the public demand for information, InfoPass has in some instances replaced physical waiting lines with invisible, digital waiting lines. Stakeholders around the country report weeks-long delays in scheduling appointments or, in some locations, consistently finding no open appointment times at all, regardless of whether they search day or night. Since in many districts customers do not have access to USCIS officers outside of the InfoPass system, relatively minor case inquiries cannot be addressed without significant delay. This situation is inconvenient for customers who have to travel long distances to the district office

[28] *See* section III. A.8, InfoPass Recommendation.

for their InfoPass appointment and can be an inefficient use of USCIS officer time and resources. Further, many low income applicants and petitioners do not have access to online services. They must rely on friends, family, or public libraries for Internet access. USCIS leadership is aware of issues with InfoPass and is working with district offices to make as many appointment slots available as possible and to address access problems.

National Customer Service Center. The NCSC provides assistance nationwide to customers who call USCIS about immigration services and benefits. However, the NCSC contract employees often do not have the needed training nor do they have the requisite information regarding individual customer case status to provide meaningful and timely information.

Case Status Service Online. USCIS customers who have an application receipt number can use the Internet-accessible Case Status Service to check the status of cases online, but this service has several limitations:[29] 1) Case status information provided online is often incorrect; 2) the processing timeframes provided frequently are not representative of actual processing times; and 3) cases that have been denied are not updated in the system and appear as "pending" long after the date of decision.

G. Coordination and Communication

Coordination and communication between district offices and service centers, between USCIS headquarters (HQ) and district/service center offices, and among USCIS and other agencies are vital to providing efficient service to USCIS customers. However, issues and concerns remain in these areas and should be addressed.

1. District Offices/Service Centers

Lack of effective coordination and communication between district offices and service centers remains a pervasive and serious problem in USCIS. The transfer of files among offices provides a basic example. Although DHS components have migrated file tracking to a new system, the National File Tracking System (NFTS),[30] files transferred between the service centers and district offices may become misplaced. Files may be misplaced if bulk files are transferred unilaterally by one facility without the knowledge of the receiving facility. Moreover, workload is often transferred from service centers to district offices without sufficient communication and coordination to allow the receiving office to plan appropriately for unexpected volume.

Additionally, there is a general lack of availability of service center staff to answer questions from the district offices. Immigration officers at service centers do not routinely communicate with immigration officers at district offices. As a result, it is not uncommon for district offices, which are more accessible to the public than service centers, to receive inquiries

[29] https://egov.immigration.gov/cris/jsps/index.jsp.

[30] *See supra* part E of this section.

from customers on service center actions which immigration officers at district offices are unable to answer.

At the management level, there are few formal avenues to address issues between the district offices and service centers. The respective chains of command for district office and service center management are essentially as they were in the legacy Immigration and Naturalization Service (INS) and do not come together until a very senior level at HQ, through the Associate Director for Operations. Management rotation provided for in the Homeland Security Act will enable these issues to be addressed effectively.[31]

2. Headquarters and District/Service Center Office Coordination

Institutionalizing HQ guidance presents challenges. It is not uncommon for such guidance to be sent to the district/service center individually, as needed, but it is not necessarily compiled into manuals for future reference, nor added to training curricula. With regular turnover in staffing, it is vital that employees in the district/service center offices receive uniform training materials and updated guidance from HQ in order to provide consistent service to USCIS customers nationwide. Unfortunately, the level of training on new guidance varies among district/service center offices. As a result, employees apply regulations or HQ guidance unevenly based on their personal or local district/service center office interpretation of national policy. Various training related solutions to this problem are discussed below.[32]

3. USCIS, Employers, and Other Government Agencies

There is an increasing reliance upon USCIS by employers and other government entities to verify the immigration status of applicants for employment and various federal and state benefits (*e.g.*, the Social Security Administration, departments of motor vehicles, etc.). USCIS' capacity to communicate and coordinate with employers and government agencies at the federal, state, and local levels have not kept pace with the needs of these customers of immigration-related information.

H. Lack of Standardization Across USCIS Business Processes

Insufficient standardization in USCIS adjudications at service centers, district offices, and even between officers within the same office remains a pervasive and serious problem. The legacy INS district/service center offices were operated with considerable autonomy, resulting in individualized management approaches at the local level to meet production goals. USCIS, in inheriting these local offices operating with great autonomy, found itself with growing production goals and little opportunity to affect organizational change during a transition involving considerable organizational change. Immigration benefits are governed by federal law, the Immigration and Nationality Act (INA) as amended. The INA should be administered equitably across the country. Customers rightly expect consistent adjudications that are administered in a uniform timeframe. Inconsistencies result in inequitable application of the law which severely impact immigrants, their families, and employers.

[31] *See* 6 U.S.C. § 271(a)(4).

[32] *See* section II.I., *infra.*

Lack of standardization includes the following three components: 1) statutory discretion under the INA is not exercised in a consistent manner by all USCIS offices or officers; 2) USCIS faces an operational maze of legislative amendments to the INA, judicial and administrative cases, regulations, internal procedures, and policy memoranda; and 3) processing times vary widely from one USCIS office to another such that an individual in one part of the country may wait just a few months for adjudication of an application or petition, while customers under the jurisdiction of another office may face a wait of several years for adjudication of the same benefit.

Examples of Insufficient Standardization. Despite the existence of national standard operating procedures, each district and service center office has adopted some unique practices. In meetings with stakeholder organizations across the country, participants repeatedly cited a lack of standardization in the following areas: adjudication of benefits; requests for expedited processing; and different form kits disseminated for district offices. These practices encumber operations and create disparities in the amount or type of information received by a customer based on geographic location.

- **Nonimmigrant Adjudications**. Stakeholders often bring to the Ombudsman's attention instances in which one petition for an H-1B nonimmigrant professional is approved and another petition filed at the same service center, at or around the same time, and for the same employer for a beneficiary with similar credentials is denied or an RFE is issued.

- **Forms Kits**. The Eastern Forms Center, which distributes USCIS forms to the public, maintains 37 different forms packages for people seeking the same common benefit – green cards based on family sponsorship (Forms I-130 and I-485). The requests are sorted by zip code and the package sent depends on which district office or sub-office will be handling the case. For example, the Los Angeles District Office provides green card applicants with a four-page packet of information on what documentation should be furnished, whereas the Atlanta District Office provides applicants for the same benefit a one-page packet. USCIS has addressed this issue in part by centralizing case processing operations at the National Benefits Center, which requires distribution of a uniform set of instructions for several form types. Nevertheless, there is no standardized format for USCIS forms, and their design is antiquated for purposes of electronic scanning and so requires time-consuming manual data entry. As a result, many of the intended benefits from centralizing operations have not been realized.

- **Processing Times**. USCIS processing times vary widely around the country. According to the USCIS website, Form I-485 Applications to Register Permanent Residence or Adjust Status, for example, take approximately four months to be adjudicated at the San Antonio District Office, while the wait at the New York District Office and the Texas Service Center is approximately 2½ and 2 years, respectively.

Insufficient standardization and widely varying processing times encourage inappropriate forum shopping by foreign citizens and employers. Moreover, should a customer move from one district/service center office's jurisdiction to another while the case is pending, the customer may be noncompliant with the submission requirements for the new jurisdiction, thereby complicating the adjudication for both the applicant and USCIS. More importantly, insufficient standardization abrogates basic notions of consistency and fairness in the administration of immigration benefits. The Ombudsman is exploring various potential recommendations that would alleviate the disparity that currently exists in the jurisdiction-based processing of applications which are part of a national benefits process. One recommendation being considered is the elimination of artificial geographic boundaries which restrict the ability of applicants to seek the most efficient district or service center when filing an application or petition. Another recommendation, which could be combined with the first, would be to offer incentives to efficient offices so that they could grow to accommodate the workloads that would migrate to them, while creating opportunities to focus on sharing best practices and improve inefficient offices.

- **Insufficient Standardization and Local Policies**. District and service center specific policies emerge when there is no USCIS Headquarters policy guidance, or when there are gray areas in the administration of immigration statutes, regulations, and policy. At best, some local flexibility may be desirable to address local issues, provide for innovation to improve customer service, and to enhance staff morale. At worst, local policies may emerge when district or service center officials disagree with national policy. Such a result is unacceptable and must be addressed aggressively by headquarters whenever it is discovered.

- **Insufficient Standardization and Training**. There is no nationally standardized USCIS continuing education or training program available to USCIS employees after completion of the U.S. Academy at the Federal Law Enforcement Training Center (FLETC). Additional training resources and opportunities are essential to addressing standardization issues. The Ombudsman is currently studying the USCIS employee training issue, as employee competence is the cornerstone for effective customer service and benefits processing.

Over 40 senior managers and staff from USCIS and the Office of the Ombudsman participated in an all day meeting on standardization in February 2005. The purpose of the meeting was to identify ways to increase the integrity of the decision-making process. As an outgrowth of this meeting, USCIS invited the Office of the Ombudsman to participate in a standardization initiative and chartered a number of working groups which have begun meeting to develop specific standardization initiatives.

The Ombudsman strongly endorses the efforts of USCIS to promote standardization and the work of the Standardization Decision-Making Project, and looks forward to continuing to work with USCIS on this critical initiative.

I. Training and Staffing

After almost two years of travel, observation, discussion, and analysis, the Ombudsman has recognized that a key to timely and professional delivery of immigration benefits is a properly-trained and flexible workforce.

1. Training

USCIS offers basic training to most of its operations staff that includes formal courses at the FLETC. These courses cover nationality law, admissibility and adjustment law, interview techniques, and other relevant topics. While useful to individuals new to immigration law and practices, these courses offer little skills training regarding actual day-to-day district/service center office operations. However, standard post-academy training does not exist. Instead, it is left to district/service center offices to determine whether and what training on legal, policy, or procedural changes will occur. In such an environment, it is not surprising that policies and procedures are inconsistent between district offices and service centers.

Operating on funds provided by fee receipts, USCIS necessarily allocates the bulk of its funds to operations. Little is provided to support training functions beyond basic training and the relevance of the current curricula towards today's district/service center operations is questionable. Officers who conduct training in the offices that have them, are often operations personnel given collateral duty assignment. As such, seen in the short-term, planning and delivering training has a negative impact on production as staff is taken off of their normal duties to prepare and deliver training programs. National and regional goals concentrate on production, not accounting for time lost to training, and offices with the greatest production challenges discard anything that does not contribute to production.

The USCIS training establishment is essentially a holdover from legacy INS. As USCIS continues its evolution into a twenty-first century provider of services, its training operations also need to keep abreast of the best methods for providing performance-based, cost-efficient training. Application fees should be set to recover the actual costs of processing and adjudicating the application, while also allowing for necessary and regular training. The Office of the Ombudsman proposes formal and standardized training on a variety of subjects, from refresher training on sub-processes to classroom training on major policy or procedural changes. In providing standardized training to district office and service center personnel, USCIS will improve consistency in processes between offices. Further, standardized training will produce officers and staff who are "interchangeable" and who can be assigned or reassigned to address production challenges in different locations without the need for weeks of site-specific briefings.

With the separation of USCIS from its legacy INS components, including the inspections, investigations, detention, and removal branches, a number of key cross-training opportunities no longer exist. In addition, legacy INS career paths no longer exist and, therefore, the number of individuals with practical knowledge of the overall complex immigration system will decline in coming years. Specifically, this lack of connectivity may create an environment where each of the newly created agencies, which handle various components of the immigration process, will not have sufficient numbers of trained employees who understand the impact of certain actions on the other agencies. Therefore, the Ombudsman recommends that specific programs be developed that will enable temporary transfers of personnel for training purposes between not

only USCIS, Immigration and Customs Enforcement (ICE), and Customs and Border Protection (CBP) but also to include the components at the Departments of State, Justice, and Labor that handle various aspects of the immigration process.

2. Staffing

A well-trained workforce will help USCIS address production and quality issues. However, USCIS is not well situated to employ that workforce. In attempting to assemble a professional and committed workforce that can be deployed to offices based on production needs, USCIS faces a major hurdle in its ability to hire and sustain its workforce.

Beginning in 1995 and continuing to the present, USCIS (and legacy INS) has relied on officers and staff hired on a term basis.[33] Authorization to hire on a term basis was given to INS to address what was then seen as a short-term problem. Each year since then, INS and USCIS have extended term employment and hired new staff on term basis. The complexities of immigration law and policy make term hiring a poor management option. The agency needed to develop a cadre of well-trained officers who were dedicated to the mission. Instead, a large part of the agency has been made up of staff who understood that their employment was temporary and who had little incentive to commit themselves to the job. Furthermore, for those term employees who excel, USCIS lost their services at a point in their careers when they became fully-productive. The agency then has to hire a replacement and cycle the new hire through basic and practical training. In effect, INS and USCIS have been the keepers of a revolving door that let inexperienced staff walk in while forcing experienced staff to walk out—a wasteful and costly process.

The creation of a USCIS personnel and training system will provide USCIS with dedicated, competent staff. Such a professional cadre would be deployable to any office that has production challenges. Such a staff can begin working in the new district office or service center with minimal delays for retooling/retraining. USCIS leadership then will have greater operational flexibility to address spikes in receipts at one office or another. A restructuring of the present fee structure to cover the cost of processing and delivering the benefit, while also providing a flexible account, will allow for standardized training and operational reassignments as needed and warranted.

Coupled with the need for an effective personnel and training system is the opportunity for USCIS supervisors and managers to gain experience in all the major functions performed by USCIS. Congress has mandated[34] that a managerial rotation program be formally established whereby USCIS supervisors and managers attain experience in both service centers and field (district) offices. The Ombudsman believes that the operation of this managerial rotation program will assist in enhancing USCIS internal communications and provide better workforce coordination of adjudication efforts.

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[33] ”Term” officers were hired to staff a 1995 INS naturalization backlog reduction effort—Citizenship USA—based on two budget reprogramming requests. Since that time, these positions have been extended on a year-to-year basis.

[34] *See* 6 U.S.C. § 271(a)(4).

III. RECOMMENDATIONS

A. Recommendations June 2004 – May 2005

The Ombudsman made a total of twelve formal recommendations to the Director of USCIS during the reporting period. These recommendations have touched on a wide variety of USCIS activities, from expanded policy guidance on naturalization to operational improvements including employee training, streamlined forms and fees, and other matters. The recommendations stem from a variety of sources including problems reported to the Ombudsman by individuals and employers, the Ombudsman's travels, discussions with stakeholders, and recommendations of USCIS employees themselves.

Figure 4: Recommendations June 2004 – May 2005

Number	Recommendation	Date
1	Fee Instructions	June 29, 2004
2	Customer Service Training for USCIS Employees	August 16, 2004
3	E-Filing	August 16, 2004
4	I-9 Storage	August 16, 2004
5	Premium Processing	September 27, 2004
6	Standardized Forms	October 6, 2004
7	Naturalization for Survivors of Domestic Violence	October 6, 2004
8	InfoPass Recommendation	November 29, 2004
9	Lockbox Recommendation	November 29, 2004
10	Issuance of Permanent Residence Cards to Arriving Immigrants	December 15, 2004
11	Pilot Program Termination	February 25, 2005
12	Issuance of Receipts to Petitioners and Applicants	May 9, 2005

In his first Annual Report to Congress last year, the Ombudsman reported on three formal recommendations: streamlining family-based immigrant processing, streamlining employment-based immigrant processing, and reengineering the green card replacement process. Those three recommendations resulted in the creation of four pilot programs by USCIS. Detailed updates on the status of those pilot programs are included in Section B below.

USCIS addressed its statutory responsibility pursuant to the Homeland Security Act of 2002 to provide formal responses to the Ombudsman's recommendations in two submissions, one dated December 17, 2004 ("December response") and one dated May 25, 2005 ("May response").[35] USCIS agreed with most of the Ombudsman's recommendations, although in some instances USCIS proposed an alternative approach to achieving the recommended goal or a modified timeframe for implementation. In addition to these formal responses, the Ombudsman's Office and USCIS have discussed the content and implementation of the recommendations informally on numerous occasions. USCIS has already implemented some of the Ombudsman's recommendations, as indicated below, while others remain works-in-progress and are continuing topics of discussion.

[35] *See* 6 U.S.C. § 272(f).

1. Fee Instructions (June 29, 2004)

The Ombudsman recommended that USCIS eliminate references to specific fees on agency forms and replace such language with the following statement (or an equivalent): *"A fee is required to process this action. Information on the current fee for this action is available on the Internet at www.uscis.gov and by telephone from the National Customer Service Center at (800) 375-5283. If the correct fee is not included, the action will not be accepted by USCIS."* This recommendation reflects the fact that the fees stated in instructions accompanying USCIS forms are often out-of-date when USCIS amends its fee schedule by regulation.

USCIS agreed with this recommendation and noted several helpful steps that it has taken toward keeping the public informed, efficiently updating fee amounts when they change, and reducing confusion caused by discrepancies in information about filing fees. Specifically, USCIS noted that it would: 1) post forms on the USCIS website with the correct fees; 2) add a list of current filing fees with each set of forms instructions to the website; and 3) send a list of current fees with any set of forms. Long-term, USCIS is considering whether to replace bulk-printed forms with forms from electronic templates that reflect the most current version. USCIS also reported that funding had been approved to change the forms themselves, presumably to eliminate the reference to specific fees, and that the alteration of the forms is underway. USCIS further reported that it is currently in discussions with DHS and the Office of Management and Budget on matters related to the modification of forms and does not yet know when this proposal will be implemented.

2. Customer Service Training for USCIS Employees (August 16, 2004)

The Ombudsman recommended that all USCIS employees who interact with immigration customers be required to receive formal training in customer service, as most of these employees have not received such training. As an interim measure, these employees should be required to complete the free customer service training courses available at the Gov Online Learning Center.

USCIS agreed with this recommendation. USCIS has indicated that the formal basic training program now includes customer service training for all USCIS adjudication officers (four hours) and immigration information officers (eight hours). In addition, supervisory adjudication officers and other managers receive customer service training at the Leadership Development Center. The Adjudicators Field Manual also has instruction on proper customer service. In addition, USCIS stated that it is considering web-based and e-learning customer service training to be provided through the USCIS On Track Learning Management System.

3. E-Filing (August 16, 2004)

To encourage customers to use USCIS' expanding e-filing capability, the Ombudsman recommended that USCIS establish a separate fee structure for e-filing applications and petitions.

USCIS agreed with the intent of this recommendation in its December response, but preferred to wait to provide such incentives until e-filed applications are less costly for the agency. Currently, USCIS computer systems do not allow for an interface between e-filed applications and the systems with applicants' information. However, in its May response, USCIS indicated that an IT Transformation Strategy is now being reviewed within DHS, which will provide a mechanism for USCIS to shift from paper to electronic information processes and reap greater cost efficiencies from e-filing. USCIS did not provide a timeline for the Transformation Strategy.

4. I-9 Storage (August 16, 2004)

In keeping with current business practices, the Ombudsman recommended that employers be authorized to store Employment Eligibility Verifications (Form I-9s) electronically in addition to the formats currently authorized, *i.e.*, original form, photocopy, microfilm, and microfiche.

USCIS agreed with this recommendation in December. Moreover, at nearly the same time as the Ombudsman's recommendation, USCIS received a request for DHS-wide comment on H.R. 4306, introduced May 6, 2004, to require the same change. USCIS collaborated with different DHS divisions to support the bill, which became Public Law 108-390 on October 30, 2004. The law included a suitable implementation period, consistent with DHS recommendation, for the development of standards and regulations.

5. Premium Processing (September 27, 2004)

The Ombudsman recommended that premium processing be made available to certain employment-based change-of-status applications (Form I-539). Premium processing allows U.S. businesses to pay a $1,000 fee for 15-day processing of petitions and applications. At the time of recommendation, only the nonimmigrant worker petition (Form I-129) was eligible for premium processing.

USCIS noted in December that it had been examining the feasibility, policy implications, and statutory authority related to the expansion of premium processing to employment-based and other cases.

The Ombudsman considers premium processing a temporary solution to problems experienced by U.S. businesses when trying to sponsor workers from other countries. With implementation of "up-front" processing, what

is now known as premium processing will be standard service for all applicants without the need for premium processing fees.

6. Standardized Forms (October 6, 2004)

The Ombudsman recommended that USCIS provide customers with a standard forms package for each petition or application type. At the time of this recommendation, the forms and information provided to the customer could vary significantly depending on the USCIS district office. For example, the Eastern Forms Center maintained 37 different forms packages, depending on the district office or sub-office, for the forms for family-based green card applications.

USCIS stated in its December response that it agrees with the intent of this recommendation and believes that using the centralized Lockbox filing procedures will result in fewer variations. USCIS subsequently confirmed that all family-based green card applications now are centrally filed. In addition, applications for replacement of lost, stolen, or expired green cards (Form I-90) are standardized and will be filed at the new Los Angeles Lockbox later this year, according to USCIS.

7. Naturalization for Survivors of Domestic Violence (October 6, 2004)

The Ombudsman recommended that USCIS correct a Naturalization Policy Memorandum to fully comply with Section 319(a) of the Immigration and Naturalization Act, as amended by the Victims of Trafficking and Violence Prevention Act of 2000 (VTVPA). The VTVPA allows certain survivors of domestic violence to become naturalized citizens after residing in the U.S. for three years, rather than five, as a lawful permanent resident. An October 15, 2002 USCIS policy memorandum mistakenly excluded one of the three categories of individuals eligible to naturalize under this provision, that is, conditional residents who gained permanent residency by approval of Form I-751 with a waiver of the usual joint filing requirement due to battery or subjection to extreme mental cruelty by a spouse.

USCIS agreed with this recommendation and subsequently issued a policy clarification. On January 27, 2005, a memorandum was posted on the USCIS website, entitled "Clarification of Classes of Applicants Eligible for Naturalization under Section 319(1) of the INA, as amended by the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Pub. L. 106-386."

8. InfoPass Recommendation (November 29, 2004)

InfoPass is an online system that enables customers to make appointments at USCIS district offices in advance, reducing the public's need to line up outside USCIS facilities in order to talk with an immigration officer. To ensure equitable access to immigration services, the Ombudsman recommended that USCIS issue InfoPass national policy guidance to

direct that: 1) all districts should schedule as many InfoPass appointments as possible; 2) each district office should either reserve time for walk-in appointments or implement clear procedures for same-day emergency appointments for exigent circumstances to be defined by USCIS Headquarters; and 3) each district office have a kiosk or computer available for customers to make appointments and, if not immediately possible, each district office must compile a list of organizations that can help customers make appointments.

USCIS agreed with this recommendation and has detailed its actions to date. First, from its monitoring of InfoPass, USCIS reports that most offices can now see customers within two weeks. However, for those offices that have a longer wait, the agency is increasing the staffing of immigration information officers. Second, USCIS has provided district offices with written guidance on reserving time for individuals who have an emergency and arrive with no appointment. Offices also were advised to consider the long distances some customers may drive to reach the office when determining whether to see that customer. In addition to InfoPass, USCIS notes that its customer service strategy also includes updates to its website and public access through the National Customer Service Center. Finally, while USCIS indicated in its December response that it plans to encourage community-based organizations, libraries, and legal service providers to provide computer access for individuals to make InfoPass appointments, the status of such liaison efforts and the availability of kiosks or computers on-site at USCIS district offices is currently unclear.

9. Lockbox Recommendation (November 29, 2004)

The Ombudsman recommended that USCIS terminate the Chicago "Lockbox" arrangement when the current Memorandum of Understanding with the U.S. Department of Treasury expires on September 30, 2005. At this Lockbox, a contractor provides centralized imaging and services for check collection, check processing, and systems development for certain applications and payments to USCIS. The Ombudsman reported that the Lockbox resulted in: 1) tracking and management difficulties due to inefficient shipment of files between USCIS offices; 2) inefficient processing resulting in delayed issuance of receipts to customers; and 3) insufficient guidance and oversight resulting in the incorrect rejection of valid filings.

USCIS disagreed with this recommendation. USCIS has adopted a business strategy over a number of years promoting centralized processing and distinguishing between the agency's "core business" of adjudicating benefit applications versus non-adjudicatory processing tasks, which may be delegated. USCIS attributed many of the problems identified by the Ombudsman to "start-up" challenges, although the Ombudsman remains concerned about many facets of Lockbox operations. In meetings with

individuals around the country, the Ombudsman has heard that the current lockbox system is confusing and adds "middle men" without adding value.

10. Issuance of Permanent Residence Cards to Arriving Immigrants (December 15, 2004)

To take advantage of new technology, the Ombudsman forwarded the following recommendations on the issuance of permanent resident cards to arriving immigrants: 1) for the short term, USCIS should revise its processing procedures to implement electronic verification in lost visa cases; and 2) for the long term, USCIS should enter into a Memorandum of Understanding (MOU) with the Department of State (DOS) to permit electronic transfers of immigrant visa packets to USCIS, and with Customs and Border Protection (CBP) such that automatic production of a permanent resident card begins upon CBP inspection and admission of an arriving immigrant.

USCIS agreed with the short-term recommendation. USCIS acknowledged that outdated procedures in a 1997 memorandum should be replaced. USCIS is currently working with DOS to assure that information in relevant databases is accessible to the other agency and to develop the necessary MOU(s) to govern the electronic sharing of information. USCIS has not yet provided a timeline for these discussions. For the longer term, USCIS generally agreed with the Ombudsman's recommendation and emphasized that any changes to electronic data requirements must be coordinated with the US VISIT program and all relevant DHS components.

11. Pilot Program Termination (February 25, 2005)

For USCIS pilot programs directly affecting customer service, the Ombudsman recommended that USCIS either: 1) publish public notice of when the pilot program will begin and end at the onset of the program; or 2) provide 30-day's notice before terminating a pilot program. In either case, the Ombudsman recommended that USCIS publish specific information on the handling of those cases affected by the program after conclusion of the pilot.

USCIS generally agreed with this recommendation. USCIS stated that it intends to provide public notice regarding the initiation and termination of pilot programs, using either the Federal Register or a press release, if benefits processing is affected and no law enforcement considerations exist that would be negatively affected by such notice.

12. Issuance of Receipts to Petitioners and Applicants (May 9, 2005)

The Ombudsman recommended that USCIS correct apparent failures to perform by the Department of Treasury and its contractor for its inability to issue timely receipts to petitioners and applicants from the Chicago Lockbox.

USCIS attributed the backlog observed in March at the Chicago Lockbox largely to a surge in filings for Temporary Protected Status. In USCIS' view, surges are not uncommon in immigration benefit processing, and the backlog did not represent a failure to perform by the Department of Treasury or the contractor. USCIS reports that an operational plan for surges in volume was in place and implemented, and that the Department of Treasury procedures allow for an alternative, mutually agreed upon processing time for deposits under such circumstances. USCIS stated that the backlog observed in March has now been eliminated. Historical data, see appendix, indicates that there is always a "surge" in USCIS volume, and a process that is stopped by such surges is a failed process. The system must be designed with surges as part of the workflow rather than an exception to it.

B. Update on Pilot Programs

1. Introduction

In response to recommendations made by the Ombudsman in last year's reporting cycle, USCIS implemented four pilot programs in three areas of business operations:

- "Green card" Renewal/Replacement Processing (I-90 Application);
- Employment-Based Immigrant Processing (I-140/I-485 Petition/Application); and
- Family-Based Immigrant Processing (I-130/I-485 Petition/Application).

The goals of the pilot programs were:

- Improved customer service by implementing a streamlined, up-front, less than 90-day process for family-based immigration, employment-based immigration, and renewal/replacement of green cards.
- Identification of national security threats and fraud early in the immigration process and reduction in the issuance of interim benefits to mitigate the risk of ineligible applicants acquiring legal status in the United States through extensions of nonimmigrant status or employment authorization pending the adjudication of their green card applications.
- Efficient resource allocation by streamlining and refocusing on the up-front adjudication of primary benefits rather than expending resources in the processing and production of interim benefits.

As the Ombudsman's Office continues to study the up-front application concept,[36] the ongoing or recently-completed pilot programs offer useful insights and suggest how other pilot programs can be revised and expanded to achieve program goals.

2. Los Angeles District Office I-90 Pilot

a. Pilot Description

In March 2004, the Los Angeles District Office began testing alternatives to the established I-90 green card replacement/renewal process. Essentially, work was moved from a service center to district offices, which allowed for up-front processing. The program restricted the cases considered under the program to those filed electronically (e-filing) in an effort to limit the need to divert resources. The goal of the program was to improve customer service while achieving process efficiency.

b. Results Reported by USCIS

USCIS reports that processing times for I-90 applications were reduced from over eight months at the beginning of the program to less than two weeks by the end of the program. USCIS plans to implement the program nationally and has stated that national implementation will not require significant infusions of staff or other resources.

c. Ombudsman's Comments

The Ombudsman applauds the efforts of USCIS to utilize technology to achieve the rapid processing of green card renewal applications. However, the Ombudsman notes that the problems identified in the 2004 Annual Report continue for green card replacement applicants who now have additional steps to follow. Additionally, all applicants now have to pay the biometric capture fee, which was not required until recently for these applicants. USCIS also has raised the base fee for the green card renewal and replacement applications. While the new USCIS process has resulted in many applicants receiving the renewal or replacement card much faster, it has come at substantial additional cost and time to the applicant.

It remains to be seen whether USCIS will be able to support a national roll-out of the program for all I-90s filed. In considering only e-filed applications in the pilot program, USCIS arguably saved staff and resources yet the applicants did not realize any savings. Greater volume of applications could create demand for more staff and resources to support the process. The Ombudsman recognizes the significant processing time improvements but, nevertheless, believes that much more analysis should be conducted on the impact on applicants before national implementation.

[36] As discussed in part B of the introduction to this report, "up-front processing" would include the screening of applications on the day of filing.

3. California Service Center Backlog Elimination Pilot

a. Pilot Description

In March 2004, USCIS began an employment-based immigrant process pilot at the California Service Center. The program considered a narrow set of cases—second preference employment-based green card applications.[37] These cases typically do not involve interviews and are among the less complicated green card cases. The USCIS goal was to promote process efficiency and complete cases within 75 days of the filing of an application so that card production and delivery could be achieved before it was necessary to issue interim benefits.

b. Results Reported by USCIS

Even with the narrowly defined target group, which was selected to maximize success, USCIS concluded that the pilot program did not improve process efficiency and did not significantly reduce the issuance of interim benefits. It also noted the program did not favorably affect backlog elimination and, in fact, hindered the success it was achieving in its overall backlog elimination goals. USCIS noted that the program actually demanded more resources and attention than the standard process in that a number of the systems that are automated under standard processing had to be conducted manually under the pilot. USCIS also found that certain functions common to both pilot and standard conditions demanded more attention from more staff under the pilot than under standard processes to meet the goal of completing cases within 75 days.

Reported USCIS Pilot Data:

Cases Considered	1,376
Cases Processed within 75 Days	347
Cases in "Process Hold" (usually security check issues)	742
Employment Authorization Documents Issued	847
Advance Parole Documents Issued	914

c. Ombudsman's Comments

The Ombudsman recommended up-front processing for all employment-based green card applications in January 2004. At that time, there were an estimated 400,000 pending employment-based green card applications at service centers and district offices.[38] The denial rates of applications and issuance rate of RFEs for pending applications had also increased

[37] Second preference employment-based applicants are members of the professions holding advanced degrees or their equivalent and who, because of their exceptional ability in the sciences, arts, or business, will substantially benefit the economic, cultural, or educational interests of the United States.

[38] USCIS has been unable to provide the Office of the Ombudsman with exact numbers stating that their current data management system is unable to distinguish between family-sponsored and employment-based green card applications. USCIS does distinguish between pending asylee green card applications and all others. In October 2003, there were approximately 392,000 non-asylum based green card applications pending at the four service centers which accept employment-based green card cases. In addition, thousands of employment cases were pending at the various district offices awaiting interviews.

dramatically. However, USCIS opted not to adopt the Ombudsman's recommendation that applicants be screened and interviewed at the time the application was filed. The Ombudsman's recommended process would have required a movement of employment-based green card applications from service centers to district offices.

The very narrow parameters of the pilot raises questions about the value of the data collected. Data provided indicates USCIS' inability to process cases within target timeframes was largely due to two factors—security checks and RFEs. The negative results from the USCIS pilot program were not unexpected since the pilot did not address the concerns that spawned the original recommendation by the Ombudsman.[39] The positive results from the Dallas pilot program on up-front family-sponsored green card processing, which addressed many of the Ombudsman's concerns, underscores the need to incorporate up-front processing into the employment-based green card application process.

4. New York District Backlog Elimination and Fraud Reduction Pilot

a. Pilot Description

One of two offices selected to pilot alternative family-sponsored green card application processes was the New York District Office, where the standard processing time was over two years. In the New York District, USCIS developed a pilot green card application processing system wherein certain newly-filed cases were processed and interviewed at an accelerated rate under the same processing structure within 90 days of filing the green card application. Ineligible and fraudulent green card applicants are a particularly serious issue in the New York District.[40] USCIS recognized this and attempted to incorporate an anti-fraud element into the pilot. In processing cases from beginning to end within 90 days, USCIS would eliminate the need to issue interim benefits, thus eliminating the practice of certain applicants who file green card applications simply to secure those interim benefits. This 90-day process was run while the District also continued to process backlogged cases. The apparent USCIS goal was to discourage the filing of fraudulent applications for the purpose of obtaining interim benefits, while continuing ongoing backlog reduction efforts.

b. Results Reported by USCIS

USCIS concluded that the program was not successful because it did not adjudicate the majority of cases within 90 days of filing, fraud rates were lower than anticipated,[41] and backlog

[39] *See* section III.B.5, *infra*.

[40] In the New York District, the green card application denial rates in 2001, 2002, 2003, and 2004 were: 43.3 percent, 31.5 percent, 47.6 percent, and 39 percent, respectively. Most of the applicants who were eventually denied were granted employment authorization while their cases were pending.

[41] USCIS expected to find that the number of applications denied for fraud would drop measurably over the life of the pilot as applicants learned that interim benefits would not be as easy to obtain. During the life of the pilot, there was no identifiable decline in fraud rates. This can be attributed, in part, to the lengthy process involved in denying fraud cases in the New York district due to judicial restrictions imposed in the district. Most cases which may eventually be classified as fraud cases are not completed for several months or years after the initial determination of suspected fraud. Additionally, many cases are regularly denied and not identified as "fraud" cases, because insufficient time and resources are devoted to prosecuting fraud and, therefore, USCIS statistics may not provide a full picture.

reduction efforts were compromised.[42] USCIS terminated the program without notice in January 2005.

USCIS Reported Data (pilot statistics through October 15, 2004):

Cases considered	8,119
Cases completed within 90 days of filing	4,509
Interim benefits issued	1,306

c. Ombudsman's Comments

The New York District pilot program was essentially an acceleration of the existing green card process in the district. The pilot program did not address many of the concerns that spawned the Ombudsman's original recommendation on family-sponsored green card application processing.[43] The pilot program was successful in reducing the number of interim benefits issued to 16 percent of the applicants in the pilot, compared to the national average of over 85 percent. However, due to legal and administrative limitations preventing the completion of certain cases within 90 days of filing, interim benefits continued to be issued to individuals who did not deserve them, for example applicants who were suspected of having committed marriage fraud in order to obtain their immigration benefits. In other cases, the New York District was unable to complete some of its cases within 90 days because of security check issues. In these cases, it was necessary to issue interim benefits.

The Ombudsman notes that while USCIS decided to terminate this New York District pilot as unsuccessful, it has committed to implementing a similar version of this program in all offices over the next two years, based on its commitment to DHS to strive to achieve a 90 day or less processing goal for all green card applicants.

The New York District pilot program demonstrated that in completing green card applications within 90 days of filing, the issuance of interim benefits can be reduced significantly. However, as noted above, work permits were issued to some individuals who should not have received them. An up-front process, wherein an applicant is interviewed on the day of filing, such as in the DORA pilot program in most instances will remedy this situation.

5. Dallas Office Rapid Adjustment Pilot

a. Pilot Description

As implemented by USCIS, the Dallas Office Rapid Adjustment (DORA) pilot program permits family-based green card applicants to file their applications and be evaluated for eligibility on the same day (up-front processing). Begun in May 2004, the process includes initiating background checks, reviewing documents, and conducting eligibility interviews on the

[42] Because pilot case receipts exceeded expectations, resources were diverted to support the pilot process at the expense of existing backlog elimination efforts.

[43] The recommendation included in the Ombudsman's 2004 Annual Report to Congress, recommended an up-front process similar to the DORA pilot program implemented in Dallas, *infra*.

day of filing with a goal of completing applications in less than 90 days of filing. Following the initial process, the application materials are bundled and forwarded to the Department of Treasury Lockbox in Chicago, Illinois, and then to the USCIS National Benefits Center for receipt of payment and file creation or collection of existing files at the Center. The National Benefits Center then issues a "Notice of Action" to the applicant and returns the newly created case file (or the existing file with the new application included) to the Dallas District Office. The Dallas District Office completes the adjudication and orders production of a green card for qualified applicants.

b. Results Reported by USCIS

From inception in May 2004 through June 3, 2005, DORA scheduled 12,037 appointments. Of these applicants, 2,183 (18 percent) failed to appear at the District Office to file their application and undergo an eligibility interview. DORA rejected 1,996 applications for the reasons shown in Figure 5 below:

Figure 5: Cases Rejected Under DORA

Incorrect Fee / No Fee	204
Insufficient Documentation	320
Duplicate Filings	197
Visa Unavailable	301
Jurisdiction	87
Other	887
Total	**1,996**

During the first ten weeks of the program, the Dallas District Office completed 45 percent of the cases interviewed within 90 days of filing (546 completed of 1,227 considered). Completion rates improved over the life of the program to the point where 71 percent of cases considered were completed during the last five reported weeks (664 completed of 935 considered). Over the life of the program, 58 percent of cases considered were completed within 90 days. Interim benefits were issued to 1,204 applicants (20 percent of all applicants considered as compared to approximately 85 percent nationally).[44]

Over the life of the program, as of June 3, 2005, 9,139 cases were received for processing. Of that number, 6,626 cases were processed prior to March 4, 2005.[45] Of the 6,626 cases processed, 5,371 cases were approved, 199 cases were denied and 1,056 cases remain pending. Of all cases processed under the DORA program through March 4, 2005, 84.1 percent have been completed. Of the remaining 15.9 percent (1,056) pending cases, 93 percent (977) are incomplete due to pending security checks. Additionally, 6 percent (68) cases remain incomplete due to unavailability of prior immigration files within the department. The remaining 1 percent (11) cases remain pending due to unavailability of previously approved petitions.

[44] The Ombudsman computed completion rates with the following formula: Cases approved + Cases denied ÷ Cases accepted for consideration. For instance, if 100 cases are accepted, fifty are approved, and ten are denied, the Ombudsman would determine that there is a 60 percent completion rate.

[45] Data on cases processed under the DORA program is only available through March 4, 2005. Cases that were accepted after that date are not (as of June 3, 2005) 90 days old.

c. Ombudsman's Comments

During the pilot program implementation, the Ombudsman addressed concerns that were raised by USCIS. Chief among them was a belief that resources allocated to the DORA program were taken at the expense of the USCIS overall backlog elimination project. However, up-front processing as provided in the DORA pilot can continue using existing permanent staff without drawing upon the temporary employees who were hired to reduce the existing case backlog. If the backlog is eliminated by the end of FY 2006, as USCIS expects, the permanent workforce will be capable of handling the daily workloads associated with the DORA program.

DORA statistics indicate that almost 2,000 applications were rejected before they could be filed. Under the regular USCIS direct-mail/lockbox process, most of these applications—except the 204 with fee issues—would likely have been accepted for processing. It follows that over 1,700 individuals would have received work permits and/or travel documents based on applications that would have ultimately resulted in denials by USCIS. Many of these 1,700 individuals are simply not eligible to receive a green card. Yet, under regular processes, they would have obtained an interim benefit.

In rejecting applications, the Dallas District saved hours of officer and clerical time. Rejecting an application takes minutes; writing formal RFEs or solid denial notices can take hours. By reviewing the application packages before filing, the DORA program eliminated the need to engage in the time-consuming processes of issuing RFEs or denial notices in over 1,700 cases, thus freeing staff to perform other functions. It also prevented these rejected applicants from wasting time and resources, only to find out months or years later that they did not qualify for the benefit for which they applied.

USCIS asserts that DORA is "labor intensive" and caused completion rates to decline.[46] These conclusions appear to be based on statistics that did not separate DORA program applicants from regular program applicants, thereby losing DORA figures in the overall workload. Available statistics reflect that apparent inefficiencies were due less to DORA program deficiencies than to other issues such as incomplete security checks, shortages in contract staff, and file transfers from service centers.

Progress can be measured in the completion rate of applications, and here the statistics tell an encouraging story. Notwithstanding security check issues and staff shortages, the Dallas District Office has been completing in excess of 65 percent of its cases within 90 days of filing for the last three months where statistics are available.

[46] USCIS statistics initially suggested that backlog reduction had not been realized in Dallas. However, upon further review by the Ombudsman, it was determined that the office actually achieved a 37 percent decrease in pending cases during the pilot period (the statistics include both pilot and non-pilot cases). Beginning with a pending green card application count in the Dallas District of 15,838 (9,598 + 6,240 correction for previously-unreported cases) at the end of May 2004, at the end of March 2005 the pending green card applications was 9,971. Overall, the Dallas District Office reduced its pending green card case count by 5,867 cases between June 1, 2004, and March 31, 2005—a 37 percent decrease.

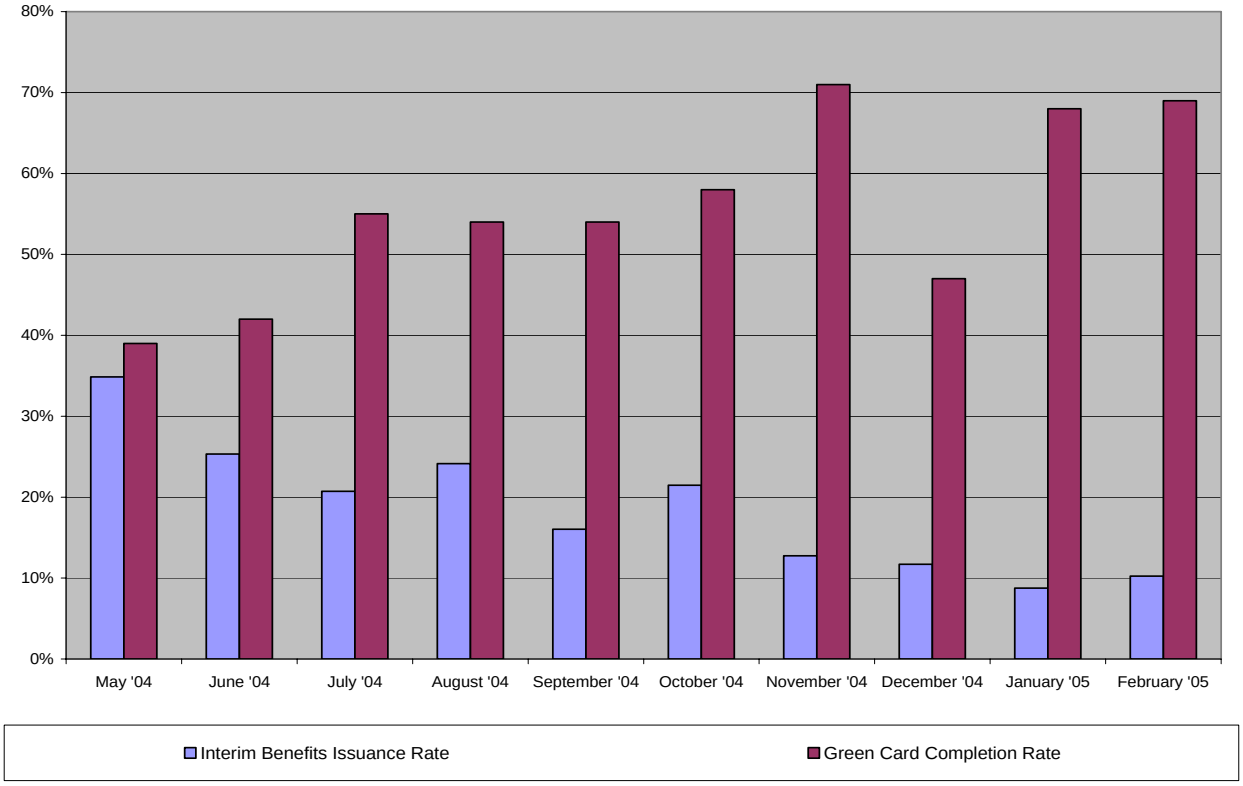
The steady climb in completion rates is encouraging in that it demonstrates the DORA model can work. As staff at the Dallas District Office and the National Benefits Center identify and eliminate process problems, the completion rate should continue to increase.

A major obstacle to completing most applications within a few days is the current complex security check process. Over the life of the program, 93 percent of the cases that exceeded the 90-day processing window did so because of pending security checks.

The rate at which the Dallas District completes cases under the DORA program is important in the overall effort to eliminate the need for interim benefits. Generally, a higher completion rate in less than 90 days will reduce the number of interim benefits issued. Under the DORA program, the Dallas District advised applicants that they could file for a work permit if there was any indication that the case might not be decided within 90 days. Over the life of the program, 2,568 applicants were scheduled to appear for the filing of work permit applications. However, between the time the applicants were scheduled and their scheduled appearance at the District Office, more than half of the applications were completed, resulting in only 1,204 of the applicants actually receiving the work permit.

Another way to measure success is to demonstrate that higher completion rates on green card applications will lead to lower rates of interim benefits issuance. Over the life of the program, as completion rates improved, interim benefits issuance rates decreased. This can be seen generally in the chart below:

Figure 6: Green Card Completion Rate Versus Work Permit Issuance Rate under DORA (May 2004 – February 2005)



Clearly, the ability to complete cases in less than 90 days limits the issuance of interim benefits. In May 2004, the first month of the program, 39 percent of the cases processed were completed within 90 days, while 35 percent of the cases required the issuance of work permits. Comparatively, during February 2005—the last month of the program for which full data is available—work permits were issued in only 10 percent of the cases. Over the life of the program, interim benefits were issued in approximately 20 percent of the cases processed compared to 85 percent nationally under current USCIS processing.

Another issue facing USCIS in developing up-front processing is "front-desking." This term stems from the INS practice of rejecting certain applications during the legalization program instituted under the Immigration Reform and Control Act of 1986. Following the program, a number of individuals and organizations brought lawsuits against the INS. Some of these suits remain pending to this day. To address this legal issue, the DORA up-front process model allows any applicant who wishes to file an application to do so, although applicants are advised of deficiencies in their applications and that those deficiencies may result in their applications being denied. They may file their application as it is or they may withhold their application until the noted deficiencies are corrected. This practice should continue in future up-front processes. DORA addresses the "front-desking" issue, but also serves as a major customer service improvement. Currently, under standard USCIS procedures, applicants often find that their applications are deficient only when they receive an RFE or denial notice—months or years after filing. In the eyes of the applicant, this is time wasted. They are then left to file a motion to reopen the application or file a whole new application package with the evidence that was missing.

Of the four pilot programs run by USCIS, the DORA program best embodies the concept of up-front processing. By enabling the completion of cases within 90 days, the program provided improved customer service while also enhancing efficiency and security by reducing the need to issue interim benefits.

6. Overall Pilot Program Analysis

The purpose of the pilot programs was to identify better ways to do business so as to promote customer service while improving process efficiency and national security. Much was learned from the programs. For the Ombudsman, the primary finding was that an up-front processing model will work within current USCIS capabilities, and that it is preferable to the current business processes. In adopting an up-front processing model, USCIS can achieve improved completion rates, enhance customer satisfaction, reduce the need for issuance of interim benefits, and substantially reduce unnecessary, time-consuming work. The Office of the Ombudsman will continue to work with USCIS to identify and recommend solutions that will enable USCIS to achieve the twenty-first century expectations of a world-class customer-centric organization that is efficient and meets the security needs of this country.

IV. LOCAL OMBUDSMAN PILOT PROGRAM

The Homeland Security Act of 2002 states that the Ombudsman shall have the responsibility and authority to appoint local ombudsmen and make available at least one local ombudsman per state.[47] In preparing to exercise this responsibility and authority, the Ombudsman has initiated a pilot program to design and develop a workable local ombudsman office which will have specific operational responsibilities over a defined geographic area. The pilot program will establish personnel and support requirements, determine liaison responsibilities and limitations, and provide a controlled model for future local ombudsman office placements.

The pilot program commenced in May 2005. The pilot program office will be staffed by a candidate local ombudsman, a candidate deputy local ombudsman, and a candidate staff assistant. The pilot program activities will be documented and tracked on a monthly basis. Periodic meetings of the Ombudsman's management team will occur to evaluate and amend the pilot program as appropriate.

The following is a list of tasks to be accomplished during the pilot program:

- Develop personnel job descriptions based on actual job requirements.
- Conduct a task and skill analysis for each job position to determine the required skills and knowledge for incumbents, as well as to determine individual training requirements for incumbents.
- Determine the requisite support equipment necessary for local ombudsman operations.
- Determine the most efficient data transfer arrangement between the pilot program office and the Ombudsman Information Management System (OIMS) to allow for: 1) inquiries and USCIS actions to be received by the pilot program office from OIMS; 2) pilot program office inputs to OIMS; and 3) and statistical data and analyses provided in both directions.
- Develop and establish inter-office and intra-office liaison methodologies and procedures, with particular emphasis on transfers from the pilot program office to: 1) the Ombudsman's Executive Officer staff; 2) the Analysis Branch within the Ombudsman's Office); 3) the OIMS staff; 4) USCIS office(s) in geographic area of responsibility; and 5) individuals/employers as appropriate.
- Develop reporting vehicles for pilot program office operations and productivity.
- Establish a baseline for pilot program office operations, duties, and tasks under appropriate quality assurance standards.

[47] *See* 6 U.S.C. § 272(e)(1).

- Develop and produce procedural manuals to establish baseline conditions for pilot program office operations, duties, and tasks.
- Compile cost data on all facets of pilot program conduct.
- Conduct a cost/benefit analysis to determine the most efficient local ombudsman office structure.
- Conduct individualized casework on a sampling basis to establish procedures for handling exigent customer problems.
- Review other tasks to be identified throughout the pilot program duration.

Upon completion of the pilot program, in conjunction with data from the OIMS office on the geographic distribution of inquiries received from individuals and employers, the Ombudsman will provide the Deputy Secretary with a local ombudsman support plan which will recommend the location of proposed local ombudsman offices and the costs associated with their deployment.

V. PUBLIC INQUIRIES TO THE OMBUDSMAN

By statute, Ombudsman is tasked with assisting individuals and employers in resolving problems with USCIS.

Currently, when the Ombudsman's office receives specific case problems from individuals or employers, the problem is processed and referred to USCIS for further action. When a case problem is resolved, the Ombudsman's office is notified, enabling the office to track the timeliness and adequacy of USCIS responses.

During the reporting period, the office received letters, emails, faxes, and telephone calls which generated a total of 1,187 cases, of which 1,059 were referred to USCIS for further action. The remaining 128 cases were outside the jurisdiction of this office and were forwarded to other agencies for further action or responses were sent directly to the complainant. The most common types of complaints received from the public included:

1. Issues pertaining to the backlog – primarily related to green card applications taking in excess of two years to process;

2. Background and security checks that are incomplete at the time of the green card or naturalization interview and which prevent the applicant from receiving the benefit;

3. Inability to schedule an InfoPass appointment for weeks or months;

4. Conflicting information when calling the National Customer Service Center and/or visiting local USCIS offices; and

5. Uninformative/uncooperative USCIS officials at local offices.

The Ombudsman's Office is continuing to evaluate the responses from USCIS and is continuing to work with USCIS on correcting many of the causes of these complaints.

VI. FISCAL YEAR 2006 OBJECTIVES

In the coming year, the Office of the Ombudsman will expand efforts to reach out to individuals and employers who continue to experience problems with USCIS. The office will continue to develop recommendations on process reengineering and training with the goal of resolving systemic problems.

Specifically, the Ombudsman will work with USCIS and DHS leadership to establish and meet specific benchmarks to realize the vision of streamlined, up-front processing with a one form, one fee system. The Ombudsman will continue to recommend implementation of an up-front processing program that builds on the success of DORA. These initiatives will decrease the need to issue interim benefits and agency reliance on interim benefits revenue. Moreover, customer service will be greatly improved with adjudication times substantially reduced and eventually fewer inquiries to congressional offices, USCIS, and the Office of the Ombudsman.

In FY 2006, the Ombudsman will be developing recommendations on new training initiatives for USCIS adjudicators to address the lack of standardization that prevents consistent decision-making. The office will make recommendations to simplify the complex body of immigration law, regulations, and processes. Such simplification will, in turn, facilitate the training of USCIS employees and allow the USCIS customer base to more easily navigate the complex immigration benefits process.

The Ombudsman will continue to develop a plan and work with DHS on establishing local ombudsman offices, as appropriate.

Also next year, the Ombudsman will continue to advocate for improved information technology infrastructure and deployment schedule for USCIS. Whether it be person-centric case management or electronic filing, improved information technology is a critical element for customer service in the twenty-first century.

Finally, the office will also work with DHS to develop more efficient and timely background and security checks in order to facilitate the application process.

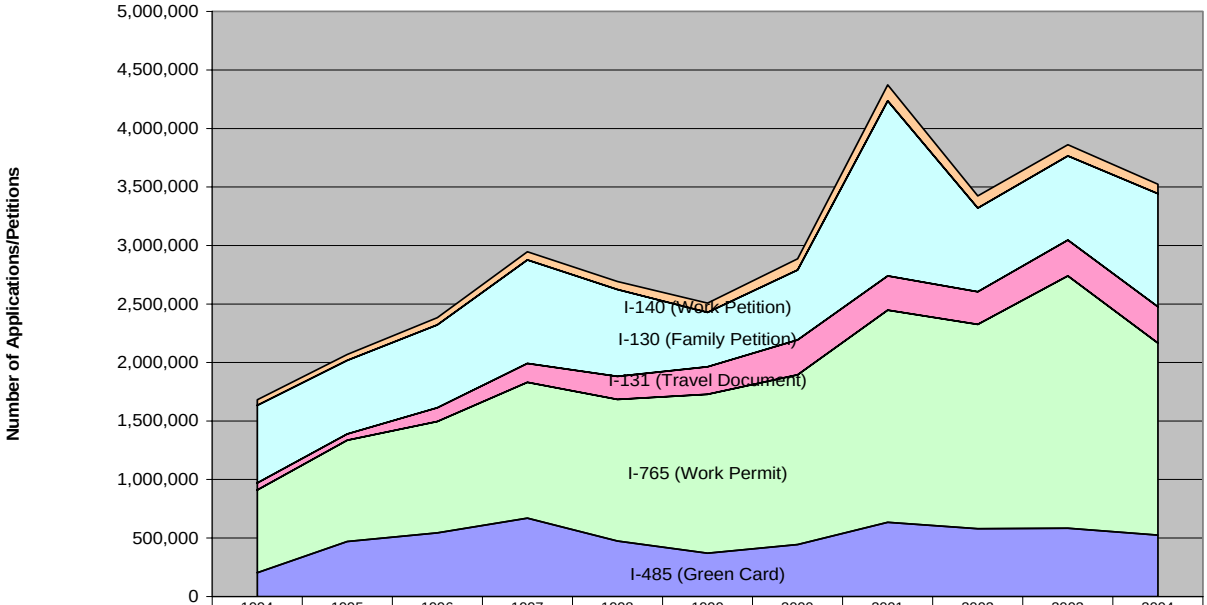
VII. CONCLUSION

President George W. Bush stated "[O]ur country has always benefited from the dreams that others have brought here. By working hard for a better life, immigrants contribute to the life of our nation." Immigrants and employers alike deserve an immigration system that matches their contributions, spirit, and desire to share in the American dream.

The Office of the Ombudsman looks forward to working with USCIS and DHS to build on the successes of the past year in order to realize the goal of a more efficient, secure immigration benefits system with world class customer service.

APPENDIX

Figure 7: Key Forms Utilized in Green Card Application Processing – Historical Annual Receipt Totals (1994 – 2004)



	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
I-140 (Work Petition)	47,105	50,724	61,042	68,804	67,511	78,879	96,001	137,695	104,361	96,578	80,348
I-130 (Family Petition)	663,472	630,138	708,727	886,053	742,917	466,044	597,569	1,495,375	714,232	719,837	967,950
I-131 (Travel Document)	60,007	52,790	116,590	160,294	196,416	234,717	298,234	292,179	279,115	305,859	309,956
I-765 (Work Permit)	707,222	864,991	952,613	1,160,680	1,211,514	1,357,320	1,451,527	1,813,479	1,745,976	2,156,095	1,640,703
I-485 (Green Card)	203,263	470,532	543,999	670,063	473,544	371,163	443,719	634,165	580,076	583,912	525,032

Fiscal Year

Figure 8: Key Forms Utilized in Green Card Application Processing – Historical Monthly Receipt Totals (2001 – 2005)

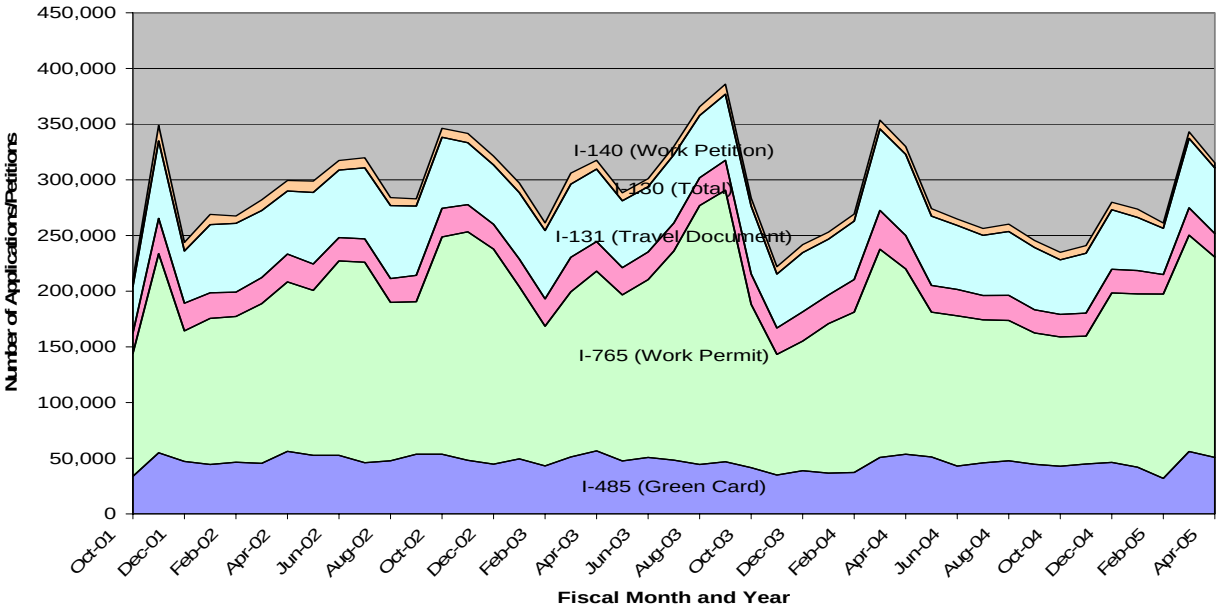
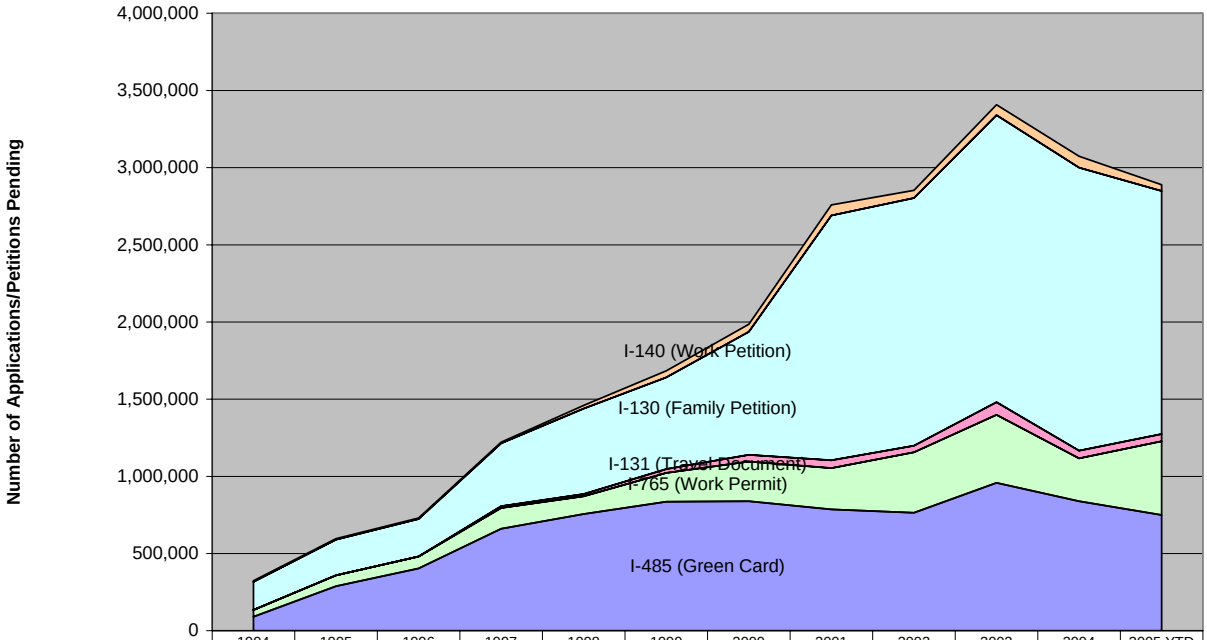


Figure 9: Key Forms Utilized in Green Card Application Processing – Historical End of Year Pending Totals (1994 – 2005)



	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005 YTD
I-140 (Work Petition)	6,873	5,612	6,739	7,698	20,282	43,394	48,043	68,884	48,998	67,582	73,594	39,707
I-130 (Family Petition)	181,740	230,662	241,745	407,115	554,275	593,235	797,343	1,585,410	1,605,016	1,859,405	1,833,905	1,575,021
I-131 (Travel Document)	422	1,080	1,864	11,010	14,207	25,727	43,675	51,298	42,236	81,511	49,277	46,432
I-765 (Work Permit)	44,135	70,324	76,674	135,352	114,722	186,036	256,451	267,329	392,907	440,994	278,437	478,148
I-485 (Green Card)	90,535	288,119	403,069	660,792	756,396	835,906	839,384	785,948	763,568	957,714	838,446	749,566

Fiscal Year

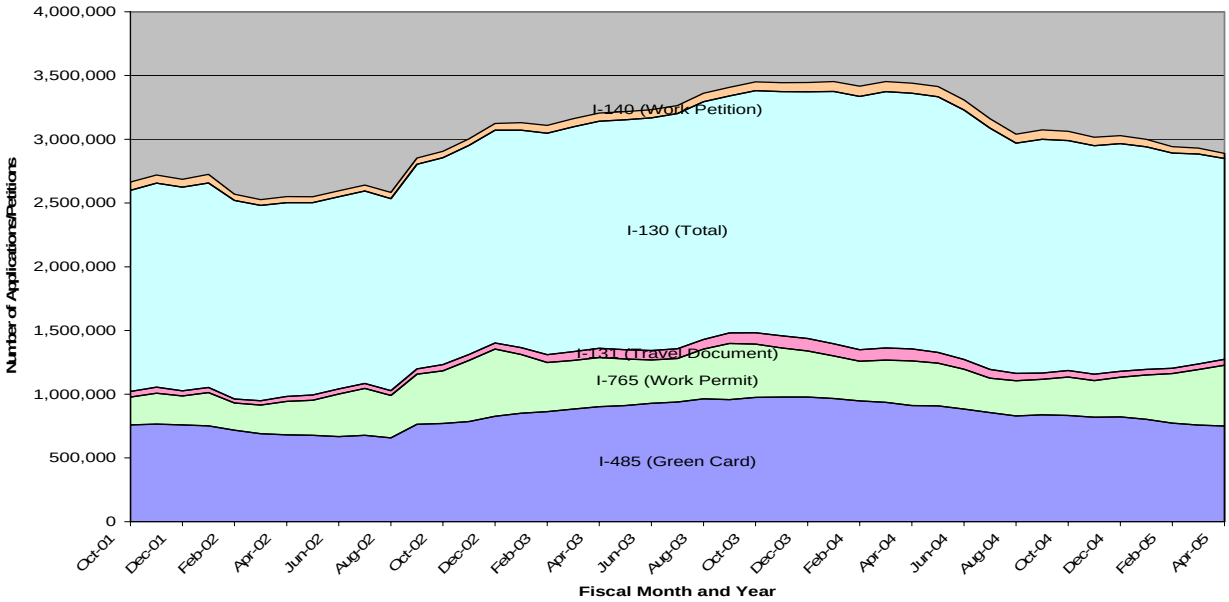



Figure 10: Key Forms Utilized in Green Card Application Processing – Historical End of Month Pending Totals (October 2001 – April 2005)