

Citizenship and Immigration Services Ombudsman

RECOMMENDATIONS REGARDING USCIS' ROLE IN THE PETITION INFORMATION MANAGEMENT SERVICE

May 16, 2012

The Petition Information Management Service (PIMS) was created to provide consular officers with electronic access to petition information. When petition approval information is not available through PIMS, the nonimmigrant visa application review process becomes inefficient and complicated. The effectiveness of PIMS is dependent on the timely transfer of petition approval information from U.S. Citizenship and Immigration Services (USCIS) to the U.S. Department of State (DOS).

The recommendations in this report focus on USCIS' responsibility to provide the DOS with information used in reviewing and adjudicating employment-based nonimmigrant visa requests.

USCIS' review and approval of employment-based nonimmigrant status petitions is inextricably linked with DOS' adjudication of employment-based nonimmigrant visa applications. Individuals and employers view USCIS and DOS functions as one uninterrupted process. This link requires careful coordination between agencies in order to provide the public with quality service.

Ideally, any gaps in information sharing should be eliminated through an automated system-to-system data transfer between USCIS and DOS. Using an electronic system would not only streamline the process, but also would be environmentally sound. Until an automated electronic exchange of information can be realized, the best interim solutions can be achieved by USCIS and DOS working together.

The Office of the Citizenship and Immigration Services Ombudsman offers these recommendations to USCIS to improve interagency coordination, efficiency, and customer service in the employment-based nonimmigrant visa process.

Sincerely,



Debra Rogers
Acting Citizenship and Immigration Services Ombudsman

RECOMMENDATIONS

The Ombudsman recommends that USCIS either:

- 1) Instruct USCIS service centers to make a copy of the Form I-129, Petition for a Nonimmigrant Worker, submission (petition package) regardless of whether a duplicate petition package has been submitted with the filing, and send it to the Kentucky Consular Center (KCC) for uploading into PIMS; or,
- 2) Send the original petition package to the KCC, for scanning of documents, data entry, and – upon completion – forward the original petition package to the USCIS National Records Center for storage; or,
- 3) Scan all approved petition packages at a USCIS facility, so electronic copies can be forwarded to the KCC for uploading into PIMS.

REASONS FOR THE RECOMMENDATIONS

- Stakeholders have reported that DOS has refused visas, or delayed the issuance of visas, to some nonimmigrant beneficiaries because required petition information was not found in PIMS.
- USCIS does not forward a petition package to the KCC when the petitioner fails to submit a copy with the original submission. Frequently, this causes a delay in the issuance of nonimmigrant visas to eligible applicants.
- Many individuals and employers experience business hardships and financial losses due to an employee's inability to begin employment in the United States.



**Homeland
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The Citizenship and Immigration Services Ombudsman, established by the Homeland Security Act of 2002, provides independent analysis of problems encountered by individuals and employers interacting with U.S. Citizenship and Immigration Services, and proposes changes to mitigate those problems.

EXECUTIVE SUMMARY

Prior to issuing a nonimmigrant visa for categories ranging from agricultural workers to athletes and entertainers, the U.S. Department of State (DOS) must first verify that U.S. Citizenship and Immigration Services (USCIS), under the Department of Homeland Security, has approved an underlying nonimmigrant petition.

In the past, DOS relied on the presentation of a hardcopy USCIS Form I-797, Notice of Action, furnished by a visa applicant to prove that he/she is the beneficiary of an approved Form I-129, Petition for a Nonimmigrant Worker, under the H, L, O, P, Q, or R visa categories.

Approximately four years ago, DOS deployed the Petition Information Management Service (PIMS) to provide a method for consular officers to rapidly confirm that individuals requesting an H, L, O, P, Q, or R nonimmigrant visa were, in fact, the beneficiary of a corresponding petition approved by USCIS. PIMS allows consular officers to access and confirm USCIS petition approval data and supporting documents online; thereby speeding up the issuance of nonimmigrant visas while reducing costs and heightening security.

Since the implementation of PIMS, stakeholders have reported that DOS has refused or delayed visa issuance to some eligible nonimmigrant worker beneficiaries because required petition information was not found in PIMS. It is USCIS policy not to forward a petition package to the DOS Kentucky Consular Center (KCC) when the petitioner fails to submit a duplicate package with the original submission. This failure to transmit information causes delays in the issuance of nonimmigrant visas because DOS cannot verify the action taken on a petition through PIMS. As a result, many individuals and employers experience increased travel expenses, additional relocation costs, and possible economic losses due to a beneficiary's inability to begin employment in the United States. Similarly, the government incurs increased costs when resources and officer time must be dedicated to the rescheduling of interviews and PIMS work-around procedures.

The Office of the Citizenship and Immigration Services Ombudsman (Ombudsman's Office) makes the following three recommendations to USCIS in the processing of an approved Form I-129, Petition for a Nonimmigrant Worker:

- 1) Instruct USCIS service centers to make a copy of the Form I-129, Petition for a Nonimmigrant Worker, submission (petition package) regardless of whether a duplicate petition package has been submitted with the filing, and send it to the Kentucky Consular Center (KCC) for uploading into PIMS; or,**

- 2) **Send the original petition package to the KCC, for scanning of documents, data entry , and – upon completion – forward the original petition package to the USCIS National Records Center for storage; or,**
- 3) **Scan all approved petition packages at a USCIS facility, so electronic copies can be forwarded to the KCC for uploading into PIMS.**

BACKGROUND

USCIS accepts, reviews, and adjudicates petitions for nonimmigrant status. DOS receives, reviews, and adjudicates visa applications filed by individuals abroad. In order to obtain most employment-based nonimmigrant visas, an individual must be the beneficiary of a nonimmigrant petition approved by USCIS.

Methodology. In reviewing PIMS issues and making these recommendations, the Ombudsman's Office: met with external stakeholders, officials from USCIS and DOS; visited the KCC to observe the PIMS process; reviewed case assistance requests involving breakdowns in the PIMS process; and examined PIMS-related data.

Visa Processing Prior to PIMS. In the past, when applying for a visa, nonimmigrant temporary workers in the H (specialty occupations), L (executives, managers and specialized knowledge workers), O (extraordinary aliens), P (athletes, entertainers and artists), Q (cultural performers), and R (religious workers) categories presented their respective USCIS Form I-797 approval notices to consulates as proof that they were the beneficiaries of approved petitions. This created several practical problems for DOS. First, consular officers faced the potential that a fraudulent Form I-797 approval notice could be presented in support of a nonimmigrant visa application. Secondly, consular officers needed an alternate process to be followed in situations where the approval notice was never received or was lost by the beneficiary.¹

The Interagency PIMS Process. DOS began using PIMS in late 2007 to improve the security and efficiency of the visa issuance process.² As a component of the DOS Consolidated Consular Database (CCD) system, PIMS enables consular officers to electronically verify nonimmigrant petition approval and review digital copies of forms and supporting documentation.³ When information is transmitted and uploaded properly, consular officers are able to use PIMS to quickly call up and review petition approval data and certain documents submitted in support of the petition. This allows officers to conduct more thorough visa interviews, thereby enhancing the integrity of the visa interview process.

At present, all consular posts must confirm petition approval, preferably in PIMS, prior to issuing a nonimmigrant visa.⁴ Applicants are no longer permitted to demonstrate petition approval solely by presenting an original I-797 approval notice.⁵

In order for the PIMS process to function properly, USCIS must send a duplicate copy of all H, L, O, P, Q and R approved petition packages to the KCC. The KCC then manually enters data into PIMS, and scans⁶ all pertinent documents including petition forms, employer support letters, and the beneficiary's identification documents into the system. DOS also keys in biographical information and the results of various security and background checks.⁷

While PIMS generally has been successful in facilitating visa issuance and enhancing process integrity, both stakeholders and DOS report that in a small, but not insignificant number of cases, petition approval information

and documents are not transmitted to the KCC.⁸ According to DOS, in approximately nine percent of nonimmigrant business cases, petition information is not available to consular officers overseas.⁹ When data that should be in PIMS is missing, the visa interview and issuance process may be delayed by days or weeks.

In January 2011, as part of its revision of Form I-129, Petition for a Nonimmigrant Worker, USCIS formally added a requirement that all Form I-129 petitions for H, L, O, P, Q and R classifications (including those requesting a change of status or extension of status) be filed in duplicate.¹⁰ Despite this duplicate filing requirement, USCIS continues to accept single-copy filings. When USCIS receives single-copy filings, it does not forward any information relating to that petition to the KCC, nor does it inform the petitioner that the beneficiary may experience delays in visa issuance because petition information was not transmitted. Petition information is reported to the KCC only for those petitions submitted in duplicate.

When an applicant appears for an employment-based nonimmigrant visa interview and the petition is not found in PIMS, or the petition data has been misentered, consular officers may resort to two alternative procedures:

- 1) They may email the KCC a petition approval verification request;¹¹ or,
- 2) Consular posts have access to certain USCIS information systems.¹² Those posts can search for petition approval information in USCIS systems, and when they find it, can approve a nonimmigrant visa on the basis of USCIS records, rather than relying on PIMS.¹³

These procedures are inefficient, require additional steps that cause delays, and do not permit the consular officer to review the underlying petition documents.¹⁴

Analysis & Recommendations

The most effective way to transmit petition information from USCIS to DOS would be to abandon the cumbersome transfer of hardcopy documents in favor of an electronic system-to-system data transfer. Until USCIS and DOS are able to electronically exchange information and fully address PIMS-related challenges, the Ombudsman's Office makes the following recommendations to USCIS:

- 1) Instruct USCIS service centers to make a copy of the Form I-129, Petition for a Nonimmigrant Worker, submission (petition package) regardless of whether a duplicate petition package has been submitted with the filing, and send it to the KCC for uploading into PIMS; or,**

As discussed in the preceding sections, USCIS does not forward any information to the KCC when the petitioner fails to file the petition in duplicate. When information on the beneficiaries of such petitions is unavailable through PIMS, eligible individuals may experience delays in the issuance of nonimmigrant visas. In addition, associated costs for individuals (increased travel expenses and relocation costs), employers (possible economic losses and missed business opportunities), and the government (expenditure of additional resources on PIMS alternative procedures, etc.) may increase. USCIS could adopt a customer friendly approach by photocopying approved petitions that lack the required duplicates and forwarding the copy to the KCC along with the Form I-797, Notice of Action, confirming approval. A significant advantage of this procedure is that it is a customer-friendly option that would require minimal changes to the current system.

Should USCIS determine that making petition copies and forwarding them to the KCC is not feasible – even for that small percentage of cases that are missing a duplicate petition package¹⁵ – the agency could, in the alternative, eliminate the duplicate filing requirement and consider the following courses of action.

- 2) **Send the original petition package to the KCC, for scanning of documents, data entry , and – upon completion – forward the original petition package to the USCIS National Records Center for storage; or,**

Under current procedures, when a petitioner does not follow the duplicate filing instructions, the KCC is unaware that a petition has been approved. When a petitioner does submit a duplicate petition package, and USCIS approves the petition, a copy of the Form I-797 along with the duplicate petition package is forwarded to the KCC.¹⁶ These documents are scanned into PIMS and destroyed by the KCC.¹⁷

If USCIS does not consider photocopying petitions a viable option, the Ombudsman's Office recommends that USCIS consider sending all approved petition receipt files directly to the KCC for scanning and entry into PIMS. This would ensure that PIMS records are complete, accurate, and eliminate the confusion and delay caused by the current process.

The benefits of adopting this procedure are: 1) the USCIS duplicate filing requirement could be eliminated; 2) DOS would have access to the original petition packages, thereby ensuring that the data uploaded into PIMS is the same data reviewed by USCIS when adjudicating the petition; 3) the number of petition approvals inadvertently omitted from PIMS would decrease significantly; and, 4) the number of PIMS-related delays experienced by applicants would decrease.

- 3) **Scan all approved petition packages at a USCIS facility, so electronic copies can be forwarded to the KCC for uploading into PIMS.**

USCIS could also consider scanning approved petition packages at a USCIS facility, and forwarding digital copies directly to the KCC. DOS could then upload these electronic copies directly into PIMS, eliminating the need to transfer hardcopy documents between the two agencies.

The chief advantages presented by this procedure are that it eliminates the need for the physical transfer of hardcopy documents between agencies and ensures that USCIS transmits all approved petitions to DOS.

Conclusion

The adjudication of nonimmigrant petitions and the review and issuance of visas is a multi-agency effort, with separate and distinct, but interconnected responsibilities. Delays in the issuance of employment-based nonimmigrant visas often result in personal and financial impacts upon visa applicants, as well as economic and operational impacts on U.S. employers.

In order to provide timely and efficient services to nonimmigrant workers and the companies that employ them, USCIS and DOS must better coordinate the exchange of information necessary for the review of employment-based nonimmigrant visa applications, and the issuance of H, L, O, P, Q and R visas.

The most effective way to transmit petition information from USCIS to DOS would be to move from the cumbersome paper transmission process to an electronic system-to-system transfer. Paperless processing would enhance security, reduce costs, streamline processing, and improve customer service. Until seamless electronic information exchange is possible, both agencies should evaluate and implement one of the proposed interim solutions recommended herein to help ensure the timely processing of all nonimmigrant visa applications.

¹ See generally Government Accountability Office, “Border Security: Strengthened Visa Process Would Benefit from Improvements in Staffing and Information Sharing,” GAO-05-859 (Sept. 2005); www.gao.gov/assets/250/247741.html (accessed May 10, 2012).

² See generally National Association of Foreign Student Advisors/Department of State Liaison Call (Sept. 15, 2010); www.nafsa.org/uploadedFiles/DOS%20Liaison%20Call%20091510.doc (accessed May 10, 2012).

³ See e.g. 9 Foreign Affairs Manual (FAM) 41.53 PN2.

⁴ U.S. Department of State Cable, “Accessing NIV Petition Information Via the CCD” (Nov. 17, 2007); http://travel.state.gov/visa/laws/telegrams/telegrams_4201.html (accessed May 10, 2012); see also National Association of Foreign Student Advisors/Department of State Consular Affairs – Visa Office Liaison Call (Feb. 15, 2008); http://www.nafsa.org/uploadedFiles/nafsa_dos_visa_office_2.pdf (accessed May 10, 2012).

⁵ See e.g. 9 FAM 41.53 N8.1.

⁶ Information obtained from DOS, Kentucky Consular Center (June 21, 2011) (once USCIS approves an employment-based nonimmigrant visa petition, it forwards one of two duplicate filed petition packages to the KCC for scanning into PIMS, and sends the second petition package to the USCIS National Records Center for storage. USCIS’ California Service Center and Vermont Service Center are currently processing the Forms I-129 at issue).

⁷ Information obtained from DOS, Kentucky Consular Center (June 21, 2011).

⁸ *Id.*

⁹ Information obtained from DOS, Kentucky Consular Center (June 21, 2011).

¹⁰ See USCIS Form, “Instructions for Form I-129, Petition for a Nonimmigrant Worker;” (Jan. 19, 2011); <http://www.uscis.gov/files/form/i-129instr.pdf> (accessed May 10, 2012) (“Submit a duplicate copy of the petition and all supporting documentation.”).

¹¹ U.S. Department of State Cable, “Accessing NIV Petition Information Via the CCD” (Nov. 17, 2007); http://travel.state.gov/visa/laws/telegrams/telegrams_4201.html (accessed May 10, 2012); and see 9 FAM 41.53 PN2.

¹² See e.g. 9 FAM 41.53 N8.1.

¹³ *Id.*

¹⁴ Stakeholders suggest when USCIS received a response to a Request for Additional Evidence (RFE) that the RFE and response be made available to consular officers. Availability of such documents through PIMS may eliminate revisiting of issues previously addressed by USCIS’ RFE process.

¹⁵ Information obtained from DOS, Kentucky Consular Center (June 21, 2011).

¹⁶ See USCIS Presentation, “Consular Notification, Service Center Operations Stakeholder Teleconference.” (Feb. 1, 2012); http://www.uscis.gov/USCIS/Outreach/Upcoming%20National%20Engagements/Upcoming%20National%20Engagement%20Pages/2012%20Events/February%202012/Consular_Notification.pdf (accessed May 10, 2012).

¹⁷ Information obtained from DOS, Kentucky Consular Center (June 21, 2011).