

## Improving Form I-130 Routing Procedures to Simplify and Prevent Delays in the Post-Approval Customer Experience Recommendation Number 64

December 18, 2024

A U.S. citizen, U.S. national, or lawful permanent resident (LPR) who seeks to sponsor an eligible family member to immigrate to the United States begins the process by filing Form I-130, *Petition for Alien Relative*, with U.S. Citizenship and Immigration Services (USCIS). Once USCIS approves the form, the family member must then move the process forward by either “adjusting” their status in the United States to that of an LPR (referred to as adjustment of status) or by applying for an immigrant visa at a U.S. embassy or consulate abroad (known as consular processing). Based on the responses in the form, USCIS will either retain the approved form for adjustment or forward it to the Department of State’s National Visa Center (NVC) for the next step in consular processing.

Unfortunately, the current form fails to elicit clear responses. This forces USCIS adjudicators into making decisions about where to direct the approved form, creating problems for the beneficiary when the form is misdirected.

In 2021, this office first noted delays in transferring approved immigrant visa petitions from USCIS to the NVC for consular processing of family-based immigrant visas occurring in large numbers, resulting in requests to redirect the case. After we submitted two informal recommendations to USCIS to address the issue, in May 2024, USCIS reverted to its earlier policy of allowing officers to exercise discretion based on the entire form.

This reversion, however, does not address key issues that first led to the problem, such as the questions on Form I-130 that fail to elicit sufficiently clear responses or the potential for misrouting despite discretion. While the CIS Ombudsman appreciates the steps USCIS has taken to tackle the problem so far, there is more the agency can do to address the remaining issues.

We look forward to the agency’s response to this recommendation. We are grateful for its commitment to continuing to work with us to improve the administration of our nation’s immigration benefits system.

Sincerely,  
Nathan Stiefel  
(Acting) CIS Ombudsman

### RECOMMENDATIONS

The CIS Ombudsman recommends that USCIS:

- Revise Form I-130 and its instructions;
- Use conditional logic in the online form to obtain clearer responses;
- Provide a self-service feature in petitioners’ online accounts to streamline transfer requests and automate the movement of approved petitions;
- Provide the NVC with a mechanism to request and obtain approved petitions from USCIS; and
- Provide relief for those impacted by the previous routing procedures.

### REASONS FOR THE RECOMMENDATIONS

- USCIS introduced additional guidance to try to clarify the questions on Form I-130 regarding where the beneficiary intends to complete the immigrant process. However, the questions in their current state do not result in responses that provide a clear answer, leading to confusion about what the petitioner intended.
- Our informal recommendations led to USCIS taking steps to amend a process that went awry, reverting to the previous reading of the form in its entirety as appropriate and as needed.
- That action, however, does not address key issues that first led to the problem, such as the questions on Form I-130 that fail to elicit sufficiently clear responses or the potential for misrouting despite discretion.
- Our desire in issuing this recommendation is to shed light on the need for additional steps that can drive further improvements in the adjudicative process.

## Improving Form I-130 Routing Procedures to Simplify and Prevent Delays in the Post-Approval Customer Experience

December 18, 2024

*The Citizenship and Immigration Services Ombudsman (CIS Ombudsman), established by the Homeland Security Act of 2002, identifies systemic problems that individuals and employers face when seeking services from U.S. Citizenship and Immigration Services (USCIS) and makes recommendations based on: individual complaints and requests for help; information and inquiries we receive from stakeholders and federal officials, including USCIS; and our interactions and meetings with individuals and employers, non-governmental organizations, and immigration professionals across the country.*

### BACKGROUND

When a U.S. citizen, U.S. national, or lawful permanent resident (LPR) wants to bring a family member to the United States, the process generally begins with the petitioner filing Form I-130, *Petition for Alien Relative*. Once USCIS approves the Form I-130, the relative must then apply for an immigrant visa at a U.S. embassy or consulate abroad (known as consular processing) or file a Form I-485, *Application to Register Permanent Residence or Adjust Status*, to adjust status with USCIS. When completing Form I-130, petitioners must specify which option their relative intends to pursue. Depending on their choice, USCIS will either retain the approved form or route it to the Department of State's National Visa Center (NVC) for the next step in consular processing.

Confusing wording on the form and inadequate form instructions often lead petitioners to provide unclear responses, forcing USCIS to make decisions about whether to retain or send the NVC the approved form. If USCIS retains the Form I-130 but the family member prefers consular processing, USCIS requires the petitioner to file Form I-824, *Application for Action on an Approved Application or Petition*, to request that USCIS send the approved Form I-130 to the NVC. The Form I-824 application fee is currently \$590, with processing times ranging from 4 to 16.5 months.

To encourage petitioners to complete the form correctly, USCIS introduced additional guidance in 2022 on its Form I-130 web page and attempted to clarify in the online version of the form that petitioners must select either consular processing or adjustment of status (and not both). According to this guidance, USCIS retained the form if the petitioner selected both options or neither. While this change was intended to provide clarity and promote consistency, its implementation and the agency's reluctance to contact individual petitioners for clarification led to prolonged family separation and added to the agency's workload. By requiring the Form I-824, petitioners were held accountable for questions on the Form I-130 that cause confusion.<sup>1</sup>

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<sup>1</sup> In the field of education testing, test developers need to know which questions are so hard that almost none of the test takers can answer them correctly because this may indicate a flaw. For example, "an unexpectedly hard item may be ambiguous, or it may have a wrong answer option—a *distractor*—that is too nearly correct." Livingston, S., "Item Analysis," in *Handbook of Test Development* (2006), p. 422; <https://fatihegitim.files.wordpress.com/2014/03/hndb-t-devt.pdf> (accessed May 6, 2024).

In May 2024, USCIS again updated its guidance on post-approval routing procedures. Now, USCIS no longer retains Form I-130 petitions based solely on blank or conflicting responses to the designated questions. Instead, if the petitioner does not provide a clear response, USCIS considers additional information, such as the beneficiary’s location, to determine where to route the approved petition. While this update should reduce the number of Form I-824 filings, it does not address the root cause of the issue—questions on Form I-130 that fail to elicit clear responses. Moreover, the updated policy change reflects the routing procedures in effect prior to 2022. USCIS modified its procedures at that time because that earlier guidance often led to approved petitions being misrouted, causing significant processing delays. There is no assurance that the same confusion will not happen again.

To address the challenges experienced by customers, the CIS Ombudsman recommends that USCIS:

1. Revise Form I-130 and its instructions;
2. Use conditional logic in the online form to obtain clearer responses and prevent the customer from leaving fields blank or selecting more than one response;
3. Provide a self-service feature in petitioners’ online accounts to streamline the transfer request and automate the movement of approved petitions to the NVC;
4. Provide the NVC with a mechanism to request and obtain approved petitions from USCIS; and
5. Provide relief for those impacted by the previous routing procedures.

### How USCIS Determines Where to Send Form I-130 After Approval

USCIS primarily uses two questions in Part 4 of Form I-130 to determine where to send an approved Form I-130. As shown below, question 61 asks the petitioner to specify a city and state if their relative (the beneficiary) plans to apply for adjustment of status. Question 62 asks the petitioner to specify a city, province, and country of the U.S. embassy or consulate where the beneficiary intends to apply for an immigrant visa abroad.

Figure 1, Form I-130 – Post-Approval Destination Questions

<p>The beneficiary is in the United States and will apply for adjustment of status to that of a lawful permanent resident at the U.S. Citizenship and Immigration Services (USCIS) office in:</p>	<p>The beneficiary will not apply for adjustment of status in the United States, but he or she will apply for an immigrant visa abroad at the U.S. Embassy or U.S. Consulate in:</p>
61.a. City or Town <input type="text"/>	62.a. City or Town <input type="text"/>
61.b. State <input type="text"/>	62.b. Province <input type="text"/>
	62.c. Country <input type="text"/>

If the petitioner answers only question 61, USCIS retains the approved petition to wait for the beneficiary to file an adjustment of status application.<sup>2</sup> Alternatively, if the petitioner responds solely to question 62, USCIS forwards the approved petition to the NVC for the beneficiary to complete consular processing.

When *both* questions 61 and 62 are answered or left blank, USCIS decides the petition's destination. Since petitioners often complete these questions incorrectly, USCIS has provided guidance to its officers to help select the appropriate destination.

Before March 2022, USCIS officers considered factors such as the beneficiary's location to make this decision.<sup>3</sup> For example, if both questions were answered or left blank, and the beneficiary's physical address on the petition was outside of the United States, USCIS would typically send the approved petition to the NVC. Notably, relevant regulations stipulate that if a foreign address is provided for the beneficiary, USCIS transfers the approved petition to the NVC.<sup>4</sup> However, USCIS determined that this practice resulted in additional processing delays due to unclear, inaccurate, or outdated information, leading to incorrect assumptions about consular processing.<sup>5</sup>

In March 2022, USCIS changed its approach. Approved petitions with both questions answered or left blank were retained by USCIS. USCIS no longer exercised discretion or considered evidence such as the beneficiary's physical location to determine the appropriate destination. If USCIS retained the approved petition, but the beneficiary intended to consular process, the petitioner needed to submit Form I-824 to request USCIS transfer the approved petition to the NVC. At the time of implementing this requirement, USCIS applied these procedures to all pending Form I-130 petitions.<sup>6</sup> As discussed in further detail below, this change led to more challenges, prompting USCIS to modify its routing procedures once again.

On May 22, 2024, USCIS announced that it would no longer retain approved petitions that did not indicate a *clear* response to the designated questions.<sup>7</sup> Instead, like the pre-March 2022 procedures, when both questions are answered or left blank, USCIS now considers the beneficiary's physical address listed on the Form I-130 when determining where to send the approved petition.<sup>8</sup> If USCIS retains the petition because a U.S. address is listed, but the beneficiary will seek consular processing, the petitioner must file Form I-824 to request the transfer to the NVC. This policy update applies to petitions pending or filed on or after May 22, 2024.

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<sup>2</sup> Approved paper-based Form I-130 petitions that are not ingested into USCIS' Electronic Immigration System (ELIS) are physically transferred and stored at the agency's National Records Center.

<sup>3</sup> Information provided by USCIS (Mar. 8, 2024).

<sup>4</sup> See 8 C.F.R. §§ 204.2(a)(3); (d)(3); (f)(3).

<sup>5</sup> Information provided by USCIS (Mar. 8, 2024).

<sup>6</sup> USCIS believed that it was necessary to apply this updated policy to pending applications to "avoid confusion among the public and officers as to how pending petitions will be routed upon approval." Information provided by USCIS (Mar. 8, 2024). The CIS Ombudsman was first notified of this processing change via its individual casework. In response to a case inquiry, USCIS informed our office that this procedural change went into effect on March 28, 2022.

<sup>7</sup> USCIS Policy Alert, "USCIS Updated Guidance for Family-Based Immigrant Visas" (May 22, 2024);

<https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20240522-Family-BasedImmigrantApprovals.pdf> (accessed June 21, 2024).

<sup>8</sup> See 6 USCIS Policy Manual, Pt. B, Ch. 5(D)(1); <https://www.uscis.gov/policy-manual/volume-6-part-b-chapter-5> (accessed June 17, 2024).

## Impact of the March 2022 Processing Change – Increased Burdens on USCIS, Petitioners, and Family Members

While as of May 2024, USCIS has reverted to its previous routing procedures, its discontinued March 2022 processing change caused delays in family reunification and increased workloads.<sup>9</sup> Evaluating its impact on both USCIS and its customers highlights the challenges and inefficiencies of using policy guidance to address unclear form questions and relying on antiquated applications for administrative processing steps.

### *Increased workloads that require USCIS to repeat its efforts*

USCIS has informed the CIS Ombudsman that it lacks sufficient data to determine how many approved Forms I-130 were affected by its March 2022 processing change.<sup>10</sup> However, the significant increase in Form I-824 filings while this processing change was in effect reveals the tremendous impact.<sup>11</sup> Before the processing change, USCIS typically received approximately 3,000 Forms I-824 every 3 months (i.e., quarter). In calendar year 2023, this figure surged to approximately 10,500 Forms I-824 per quarter.

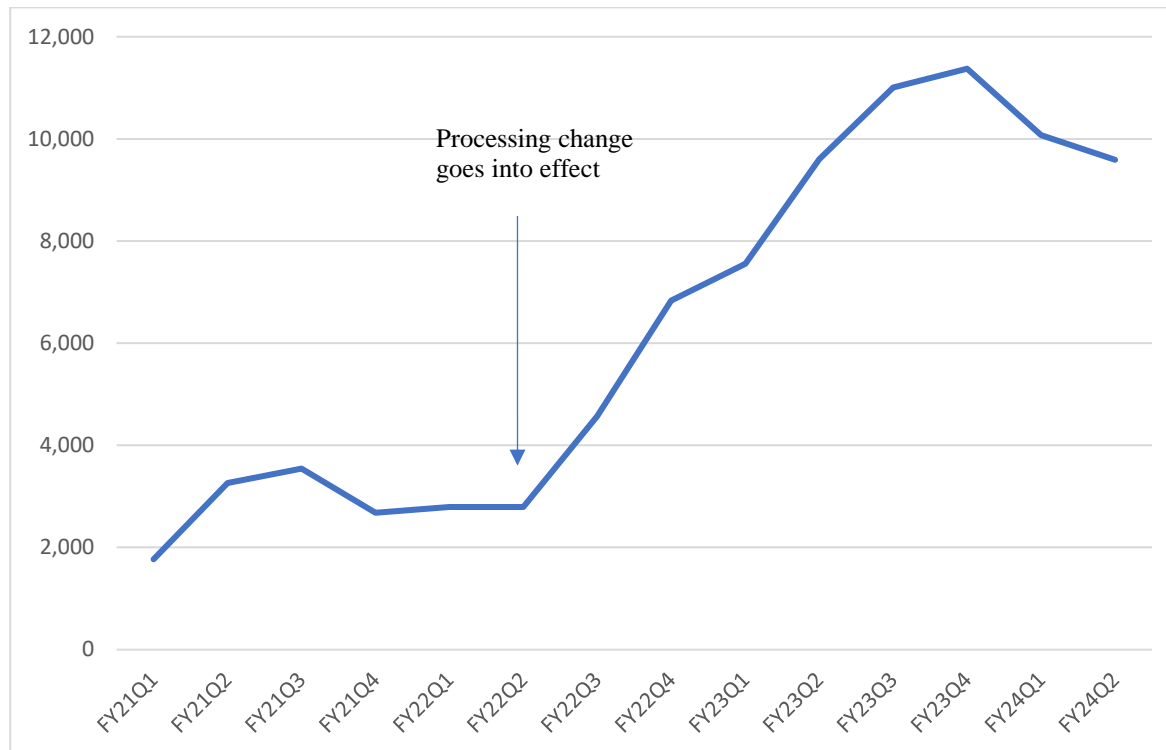
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<sup>9</sup> Although USCIS does not have data on whether the number of misrouted Forms I-130 decreased as a result of its March 2022 processing change, it believes that this processing change achieved the intended objective. Specifically, “the change has prompted petitioners to assist USCIS in making a determination regarding the routing of their petition.” Information provided by USCIS (Mar. 8, 2024).

<sup>10</sup> Upon approving a Form I-130 within its system, officers must select from four different approval phrases that determine where the approved petition will be sent. To obtain a better understanding of the impact of USCIS’ processing change, the CIS Ombudsman asked USCIS to provide data on the different approval phrases selected by officers since the processing change went into effect, as well as for the entire fiscal year preceding the processing change. In response to this request, USCIS confirmed that its available data is insufficient to provide an answer. Information provided by USCIS (Mar. 8, 2024).

<sup>11</sup> While the CIS Ombudsman believes that USCIS’ processing change is the primary reason for the increase in Form I-824 filings, USCIS notes that “major fluctuations (increases or decreases) in receipt filings can be caused by a variety of factors, including things like the office closures in FY 2021 and FY 2022 due to the COVID-19 pandemic and agency resource constraints.” The CIS Ombudsman acknowledges that Form I-824 serves multiple purposes, such as requesting that USCIS send an approved immigrant visa petition to the NVC, obtaining a duplicate approval notice, or informing a consulate of a case action. In FY 2023, however, 80 percent of all Forms I-824 filed requested USCIS’ transmission of an approved immigrant visa petition to the NVC. The number of these particular requests surged from 10,040 in FY 2022 (when USCIS began implementing its processing change) to 31,919 in FY 2023. While requests for USCIS to notify a new U.S. consulate about case actions also increased from FY 2022 to FY 2023, the number of such requests remained under 1,000 in FY 2023, indicating a relatively minor uptick compared to the primary reason applicants are filing the Form I-824—to request USCIS transfer their approved immigrant visa petition to the NVC. Information provided by USCIS (Mar. 8, 2024). Notably, in announcing its modified routing procedures in 2024, USCIS acknowledged that the updated guidance should reduce the number of Forms I-824 filed. See USCIS Policy Alert, “USCIS Updated Guidance for Family-Based Immigrant Visas” (May 22, 2024) (*supra* note 7).

Figure 2, Form I-824 Receipts by Quarter, FY 2021-FY 2024 (Q2)



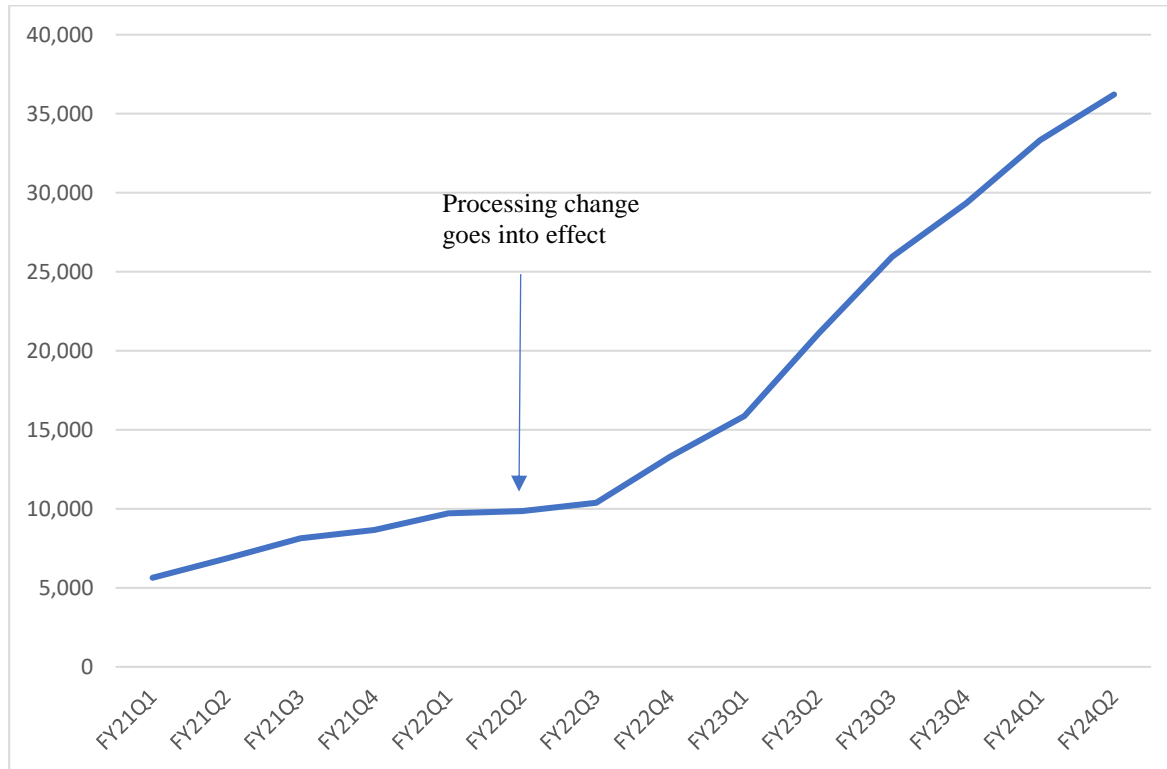
Source: USCIS Web page, “Immigration and Citizenship Data;” <https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data> (accessed June 21, 2024).

The processing change caused the pending Form I-824 inventory to exceed 35,000 applications, marking a 238 percent increase from the start of the change through December 31, 2023 (*see* Figure 3). Consequently, as of April 30, 2024, the median processing time for Form I-824 applications was 8.5 months,<sup>12</sup> more than 5 months beyond USCIS’ cycle time goal of 3 months.<sup>13</sup>

<sup>12</sup> USCIS Web page, “Immigration and Citizenship Data;” <https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data> (accessed June 17, 2024).

<sup>13</sup> Although cycle times and median processing times are calculated differently, they are generally comparable. *See* USCIS Web page, “USCIS Announces New Actions to Reduce Backlogs, Expand Premium Processing, and Provide Relief to Work Permit Holders” (Mar. 29, 2022); <https://www.uscis.gov/newsroom/news-releases/uscis-announces-new-actions-to-reduce-backlogs-expand-premium-processing-and-provide-relief-to-work> (accessed May 6, 2024).

Figure 3, Pending Forms I-824 by Quarter, FY 2021-FY 2024 (Q2)



Source: USCIS Web page, “Immigration and Citizenship Data;” <https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data> (accessed June 21, 2024). Note: Pending data begins with the number of Forms I-824 pending at the end of FY 2021 Q1 (i.e., December 31, 2020), and continues through the end of FY 2024 Q1 (i.e., December 31, 2023).

The increase in Form I-824 filings adds an unnecessary workload for USCIS, as it involves processing an already approved benefit. On average, it takes officers just under 1 hour to adjudicate Form I-824,<sup>14</sup> diverting their attention from other backlogs and substantive adjudications to perform administrative tasks.

While the additional Form I-824 applications generated filing fees for USCIS, their overall impact may have outweighed the additional revenue. Apart from the strain on adjudicative resources, this workload created cascading challenges, such as increased calls to the USCIS Contact Center and more expedite requests. Online filing is not an option for the Form I-824, meaning USCIS lockbox staff must handle and transfer these paper-based filings. USCIS also must spend resources on locating and transferring

<sup>14</sup> “U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements,” 88 Fed. Reg. 402, 449 (Jan. 4, 2023). One of the primary factors that contributes to this completion rate is the manual creation of a paper packet for the NVC, which includes copies of the underlying petition and a copy of the Form I-824. For Forms I-130 adjudicated in ELIS, USCIS can electronically transmit the petition to the NVC, which reduces the administrative burden. Information provided by USCIS (Mar. 8, 2024).

any paper-based Forms I-130 from the National Records Center (NRC) to a USCIS office to process the Form I-824.

### *Complicating a partner agency's workforce planning*

Upon receiving an approved Form I-130 from USCIS, the NVC prepares the application for a visa interview at a U.S. embassy or consulate abroad. Maintaining visibility into USCIS' workload is essential for the NVC to meet its established timeframes, allocate resources effectively, and maximize immigrant visa usage, particularly in family-sponsored visa categories.

Unpredictable workload volumes can significantly impact NVC's operations, hindering its ability to prepare adequately, meet deadlines, and reallocate resources as needed. By retaining thousands of Forms I-130 that were meant for the NVC, USCIS created downstream challenges for the Department of State. The inconsistent timeframes associated with Form I-824 applications further complicated the NVC's ability to anticipate and prepare for a potential increase in approved petitions.

### *Increased costs and wait times for petitioners and family members*

The March 2022 processing change significantly impacted thousands of petitioners, particularly those whose forms were pending when the change took effect.<sup>15</sup> Many of these petitioners waited several years for their Forms I-130 to be approved, only to face additional financial burdens and processing delays before their family member(s) could proceed with consular processing.<sup>16</sup>

Feedback from stakeholders indicates petitioners and their legal representatives were confused when they received approval notices stating that USCIS was retaining the Form I-130 petition and that they needed to file Form I-824 (and pay a \$590 filing fee) to transfer it to the NVC.<sup>17</sup> Petitioners who either responded to both questions or left them blank but provided a foreign address for the beneficiary expected the agency to transfer their approved petition to the NVC. They based this expectation on past agency practice and applicable regulations.<sup>18</sup> Although USCIS published resources primarily aimed to educate prospective filers,<sup>19</sup> it did not directly communicate its processing change to petitioners who previously filed Forms I-130—which can be pending for years in some visa preference categories.

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<sup>15</sup> In calendar year 2023, the CIS Ombudsman received 319 case assistance requests from individuals impacted by the procedural change. Among these, 255 petitions (80 percent) were filed before May 9, 2022, when USCIS updated its Form I-130 web page.

<sup>16</sup> As of December 2023, the average processing time for the Form I-130 was 21.9 months. USCIS Web page, "FY22 Appropriations Reporting Requirement – Application Processing Data for January 2024" (Feb. 6, 2024); [https://www.uscis.gov/sites/default/files/document/data/appropriation\\_requirement\\_december\\_2023.csv](https://www.uscis.gov/sites/default/files/document/data/appropriation_requirement_december_2023.csv) (accessed May 6, 2024).

<sup>17</sup> Information provided by stakeholders (Sep. 12, 2023, and Jan. 10, Feb. 12, and Mar. 13, 2024) and received through requests for case assistance.

<sup>18</sup> See 8 C.F.R. §§ 204.2(a)(3); (d)(3); (f)(3).

<sup>19</sup> On May 9, 2022, a little over a month after USCIS made this processing change, the agency posted additional information to its Form I-130 web page. This post emphasized the importance of selecting only one option, noting that petitioners who want to change their selection post-approval will need to file Form I-824. Since the initial website update, USCIS has repeatedly attempted to publicize this processing change, indicating that petitioners continue to struggle with responding to these questions. For example, USCIS has attempted to draw attention to this information by adding bold instructions at the top of the Form I-130 web page. It also developed an instructional video to educate petitioners on the importance of providing the proper information for Part 4 (Q. 61 or 62) on the Form I-130 to prevent processing delays. In addition, in October



Petitioners that became aware of the processing change and needed to clarify their response for a pending petition were instructed to call the USCIS Contact Center.<sup>20</sup> The Contact Center would then advise petitioners to submit an e-Request.<sup>21</sup> After completing this two-step process, petitioners would not receive timely confirmation that the requested changes were made, often leading to multiple inquiries. Ultimately, they would not find out if USCIS revised their selection until after receiving the Form I-130 approval notice, which indicates where the approved petition has been routed.

Petitioners expressed concern over the many ways further delays could impact their relatives, including visas no longer being available in the event of a visa retrogression,<sup>22</sup> children potentially losing eligibility under the Child Status Protection Act (CSPA),<sup>23</sup> and the timing of other processes that commence only after the approved petition is received by the NVC.<sup>24</sup> Recognizing these daunting possibilities, petitioners frequently submitted inquiries to USCIS, the NVC, the CIS Ombudsman, and Members of Congress to resolve the issue without having to file Form I-824. In response to the CIS Ombudsman's case assistance related inquiries, USCIS would reiterate that petitioners needed to file Form I-824 unless there was clear USCIS error. Ultimately, this processing change left petitioners and their family members subject to further delays, creating an unanticipated barrier in their relatives' immigration pathway.

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2022, USCIS modified its online Form I-130 so that alerts appear next to the designated questions to assist petitioners with responding to these questions. *See* USCIS Web page, "I-130 Petition for Alien Relative" (May 9, 2022); retrieved from <https://web.archive.org/web/20220512111836/https://www.uscis.gov/i-130> (accessed May 6, 2024). This bold language was initially added in September 2023. USCIS Web page, "I-130 Petition for Alien Relative" (Sep. 25, 2023); retrieved from <https://web.archive.org/web/20230926120635/https://www.uscis.gov/i-130> (accessed May 6, 2024). *See also* USCIS Instagram Web page, "Filing Tip Friday" (Jan. 12, 2024); <https://www.instagram.com/uscis/reel/C2AEmWgL2B/> (accessed May 6, 2024).

<sup>20</sup> *See* USCIS Web page, "I-130 Petition for Alien Relative" (Feb. 5, 2024); <https://www.uscis.gov/i-130> (accessed May 6, 2024).

<sup>21</sup> Information provided by USCIS (Mar. 8, 2024).

<sup>22</sup> Visa retrogression happens when the demand for visas exceeds the available supply, causing the Department of State to move cut-off dates on the Visa Bulletin backwards in time. This results in longer waiting times for certain individuals applying for immigrant visas. For further information, *see* USCIS Web page, "Visa Retrogression" (Dec. 5, 2023); <https://www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-priority-dates/visa-retrogression> (accessed May 6, 2024).

<sup>23</sup> Delays in routing an approved immigrant petition typically do not affect the beneficiary's calculated CSPA age. However, to qualify under the CSPA, applicants must seek to acquire lawful permanent residence within one year of visa availability, absent extraordinary circumstances. *See* INA §§ 203(h), 204(k). Filing a Form I-485 or Form I-824 generally satisfies the sought-to-acquire requirement. The CIS Ombudsman has received requests involving petitioners who alleged USCIS errors. Some were unaware of USCIS' March 2022 processing change, while others experienced errors in the routing of their approved petitions. Instead of filing a Form I-824, these petitioners pursued corrective action through USCIS' customer service channels. When these efforts failed to resolve the issue, they contacted the CIS Ombudsman's office. The time spent attempting to course correct illustrates how delays in transferring petitions may jeopardize eligibility under the CSPA by encroaching on the one-year sought-to-acquire requirement.

<sup>24</sup> For example, for petitioners to have their relatives considered for certain family reunification parole processes, their approved Form I-130 petitions must be at the NVC. *See* USCIS Web page, "Family Reunification Parole Processes" (Jan. 2, 2024); <https://www.uscis.gov/FRP> (accessed May 6, 2024). In addition, to file Form I-601A, *Application for Provisional Unlawful Presence Waiver*, Form I-130 beneficiaries must have an immigrant visa case pending with the Department of State. *See* USCIS Web page, "Provisional Unlawful Presence Waivers" (Apr. 1, 2024); <https://www.uscis.gov/family/family-of-us-citizens/provisional-unlawful-presence-waivers> (accessed May 6, 2024).

## May 2024 Policy Update and Continued Challenges

The surge in Form I-824 filings appears to have prompted USCIS to reverse its March 2022 processing change,<sup>25</sup> instructing officers to once again use discretion to decide where to transfer approved petitions to decrease Form I-824 submissions and, thereby, alleviate delays in family reunification. However, USCIS must still address petitions impacted by its previous policy—whether petitioners have already filed Form I-824 or still need to do so.

For petitions adjudicated under the new guidance, returning to the former routing procedures remains an imperfect solution. Previous challenges, which led to misrouted petitions and delays, prompted USCIS to change course in 2022. Also, while USCIS’ guidance attempts to clarify how petitioners with pending petitions can update their responses,<sup>26</sup> it remains unclear if the agency’s customer service avenues are adequately prepared to timely process these requests.

The updated guidance improves transparency surrounding USCIS’ post-adjudicative routing procedures and should reduce Form I-824 filings. However, additional actions are needed to address the systemic issues that continue to result in misdirected petitions and processing delays.

### Recommendations: Applying Lessons Learned to Streamline the Transfer Process

On December 13, 2021, President Biden issued Executive Order (EO) 14058, *Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government*, instructing agencies to improve customer experience with government services. Recognizing that paperwork requirements and administrative hurdles can operate as “time taxes” and create “systemic barriers to opportunities and benefits,” the order emphasizes the need for federal agencies to reduce these burdens and streamline processes for delivering Government services.<sup>27</sup>

In accordance with EO 14058, the Department of Homeland Security (DHS) created a Customer Experience Directorate to implement human-centered practices that improve customer experiences.<sup>28</sup> The DHS Chief Information Officer also established best practices for DHS agencies, such as USCIS, to follow in implementing EO 14058.<sup>29</sup> These measures seek to execute burden reduction strategies such as simplifying forms, using plain language to ensure customers complete forms correctly on their

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<sup>25</sup> In announcing its modified routing procedures, USCIS acknowledged that it expects its updated guidance will reduce the number of Forms I-824 filed because it will keep fewer petitions for adjustment of status processing. USCIS Policy Alert, “USCIS Updated Guidance for Family-Based Immigrant Visas” (May 22, 2024)(*supra* note 7).

<sup>26</sup> The Policy Manual instructs petitioners to provide updated information by contacting the office indicated on the Form I-130 receipt notice. The Form I-130 web page instructs petitioners to request changes through the Contact Center or the office address printed on their Form I-130 receipt notice. See 6 USCIS Policy Manual, Pt. B, Ch. 5(D)(1); <https://www.uscis.gov/policy-manual/volume-6-part-b-chapter-5> (accessed June 17, 2024). See also USCIS Web page, “I-130 Petition for Alien Relative” (Feb. 5, 2024); <https://www.uscis.gov/i-130> (accessed June 17, 2024).

<sup>27</sup> Executive Order 14058 of December 13, 2021, “Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government,” 86 Fed. Reg. 71357 (Dec. 16, 2021).

<sup>28</sup> See DHS Web page, “Customer Experience at DHS” (Apr. 9, 2024); <https://www.dhs.gov/cx> (accessed May 6, 2024).

<sup>29</sup> DHS Memorandum, “Paperwork Reduction Act Burden Reduction Initiative” (Mar. 22, 2022); [https://www.dhs.gov/sites/default/files/2022-05/Burden\\_Reduction\\_Initiative\\_Memo\\_Final%20PDF%20CFO%20signed.pdf](https://www.dhs.gov/sites/default/files/2022-05/Burden_Reduction_Initiative_Memo_Final%20PDF%20CFO%20signed.pdf) (accessed May 6, 2024).

first attempt, reducing how frequently an agency requests information from its customers, and simplifying both public-facing and internal processes to improve efficiency.

Also, as directed by President Biden in EO 14012, *Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans*, USCIS must review existing regulations, orders, guidance documents, policies, and similar agency actions to identify barriers and sources of fear that prevent immigrants from accessing the legal immigration system as well as government services available to them, and to make recommendations on how to remove these barriers, consistent with applicable law.<sup>30</sup>

To improve the customer experience and remove a barrier to legal immigration, the CIS Ombudsman recommends that USCIS modernize the transfer of approved Form I-130 petitions to the NVC. To achieve these long-overdue reforms, USCIS could integrate the lessons learned from its processing change, which delayed thousands of petitions from moving along the immigration path.

The CIS Ombudsman recommends that USCIS:

#### 1. **Revise Form I-130 and its instructions.**

While USCIS has reverted to its former routing procedures, it has not addressed the root cause of the issue—the questions on Form I-130 that fail to elicit clear responses.<sup>31</sup> USCIS lacks complete data, but as of December 31, 2023, there were at least 156,544 Forms I-130 pending in the agency’s Electronic Immigration System (ELIS) where the petition does not clearly indicate an intent to consular process or adjust status.<sup>32</sup> Directing officers to consider supplemental evidence and to exercise discretion to compensate for this lack of clarity is a partial solution. Although this approach may help reduce misdirected petitions, it exemplifies the confusion surrounding what should be straightforward questions and further highlights the need for form revisions. Until USCIS revises the form and instructions to make it easier to complete the form correctly on the first try, it is placing an additional time and monetary burden (filing the Form I-824) on the petitioner, increasing the frequency of additional information collection, and creating barriers to their family members’ paths to LPR status.

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<sup>30</sup> Executive Order 14012, “Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans,” 86 Fed. Reg. 8277 (Feb. 5, 2021).

<sup>31</sup> In October 2021 and October 2022, the CIS Ombudsman issued informal recommendations to USCIS—ideas offered to the agency to cure a problem without rising to the level of a more formal recommendation and response process—to update Form I-130 to obtain clearer responses from petitioners. On July 31, 2023, over a year after USCIS began implementing its processing change, the agency informed the public that it would extend the current edition of the Form I-130, last revised in July 2021, without making any changes. USCIS relayed that it has initiated a working group to incorporate the CIS Ombudsman’s previous recommendations into future form revisions. However, a full revision of the Form I-130 has been postponed due to competing priorities and limited resources. Information provided by USCIS (Mar. 8, 2024).

<sup>32</sup> Information provided by USCIS (Mar. 8, 2024). USCIS officers adjudicate Forms I-130 in both the Computer Linked Application Information Management System (CLAIMS 3) and ELIS. For petitions pending in ELIS, responses to Part 4 (Q. 61 and 62) are electronically captured, enabling the agency to confirm the number of pending petitions that responded to these questions inappropriately. This data is unavailable for petitions pending in CLAIMS 3. As of December 31, 2023, of the more than 2 million Form I-130 petitions pending, approximately 30 percent are pending in CLAIMS 3. As such, in addition to the 156,544 known cases, there are likely thousands of more petitioners that provided an unclear response and may eventually need to file Form I-824.

The CIS Ombudsman acknowledges that form revision initiatives can be resource-intensive, lengthy, and are typically tied to the form’s expiration date.<sup>33</sup> However, given the confusion caused by these questions and the additional workloads it has created for the agency, prioritizing such revisions appears necessary and may even be capable of being incorporated into upcoming planned regulatory actions.<sup>34</sup>

To elicit clearer responses, USCIS should make the following revisions to Form I-130 and the corresponding instructions:

- Adjust the question format to clearly state that petitioners must select only one option. USCIS should look to Form I-140, *Immigrant Petition for Alien Workers*, where the agency has not encountered issues with petitioners failing to clarify the beneficiary’s intended pathway. Form I-140 directs petitioners to affirmatively check a box to request consular processing or adjustment of status and explicitly instructs them to choose only one option (see Figure 4). USCIS could adopt similar language on the Form I-130.

Figure 4, Comparison of Current Post-Approval Destination Questions for Form I-140 and Form I-130

<i>Form I-140 Post-Approval Destination Questions:</i>	<i>Form I-130 Post-Approval Destination Questions:</i>
<p><b>Part 3. (select only one box):</b></p> <p><b>1.a.</b> <input type="checkbox"/> Alien will apply for a visa abroad at a U.S. Embassy or U.S. Consulate at:</p> <p><b>1.b.</b> City or Town <input type="text"/></p> <p><b>1.c.</b> Country <input type="text"/></p> <p><b>2.a.</b> <input type="checkbox"/> Alien is in the United States and will apply for adjustment of status to that of lawful permanent resident.</p>	<p><b>The beneficiary is in the United States and will apply for adjustment of status to that of a lawful permanent resident at the U.S. Citizenship and Immigration Services (USCIS) office in:</b></p> <p><b>61.a.</b> City or Town <input type="text"/></p> <p><b>61.b.</b> State <input type="text"/></p> <p><b>The beneficiary will not apply for adjustment of status in the United States, but he or she will apply for an immigrant visa abroad at the U.S. Embassy or U.S. Consulate in:</b></p> <p><b>62.a.</b> City or Town <input type="text"/></p> <p><b>62.b.</b> Province <input type="text"/></p> <p><b>62.c.</b> Country <input type="text"/></p>

- Eliminate unnecessary questions, such as those regarding U.S. embassy or consulate and USCIS field office information. The Department of State determines the appropriate U.S. embassy or consulate for each case based on the beneficiary’s residence or nationality.<sup>35</sup> Similarly, USCIS determines the appropriate field office based on the beneficiary’s Form I-

<sup>33</sup> The current version of the Form I-130 expires on February 28, 2027.

<sup>34</sup> For example, USCIS listed a Proposed Rule on the Fall 2023 Unified Regulatory Agenda, which seeks to promote the efficient use of immediately available immigrant visas. Office of Management and Budget, “Fall 2023 Unified Regulatory Agenda” (Feb. 9, 2024); <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202310&RIN=1615-AC22> (accessed May 6, 2024). USCIS could make the necessary revisions to the Form I-130 in coordination with this rulemaking.

<sup>35</sup> 9 Foreign Affairs Manual 504.4-9(c).

485, *Application to Register Permanent Residence or Adjust Status*.<sup>36</sup> Removing unnecessary questions will limit confusion, helping to focus customers' attention on only the information USCIS needs.

- Clarify Form I-130 instructions using plain language to explain the implications of the selected choice.<sup>37</sup>

## 2. Use conditional logic on the online Form I-130 to obtain clearer responses.

The current online version of Form I-130 allows petitioners to leave the post-approval destination questions blank or respond to both questions. The CIS Ombudsman's casework reveals that online filers often provide responses to both questions, unlike paper-based filers who tend to leave the designated questions blank more frequently.<sup>38</sup>

- USCIS should incorporate conditional logic<sup>39</sup>—which tailors subsequent questions based on the user's answers—for these questions to achieve two goals: ensure online filers do not leave the relevant question blank and prevent them from providing responses to both questions.

## 3. Modernize the customer experience by implementing a self-service tool.

A self-service tool allowing certain petitioners to request the transfer of their approved petitions, rather than seeking resolution through the filing of Form I-824, would significantly enhance the customer experience.

USCIS has already started introducing other self-service tools to facilitate direct interaction between online accounts and USCIS systems. Individuals with online accounts can now reschedule most biometrics services appointments and update their addresses for all pending benefit requests in

<sup>36</sup> 7 USCIS Policy Manual, Pt. A, Ch. 5(B); <https://www.uscis.gov/policy-manual/volume-7-part-a-chapter-5> (accessed May 6, 2024). Notably, the Form I-140 does not ask petitioners to specify the city or town and state where the beneficiary will apply for adjustment of status.

<sup>37</sup> For example, the instructions could state, "If you check box 1.a in response to Part 4 (*i.e.*, Beneficiary will apply for a visa abroad at a U.S. Embassy or U.S. Consulate), we will transfer your approved petition to the Department of State's National Visa Center for consular processing. Alternatively, if you check box 2.a (*i.e.*, Beneficiary is in the United States and will apply for adjustment of status to that of lawful permanent resident), we will transfer your approved petition to the USCIS National Records Center to await the filing of your relative's Form I-485. If you select 2.a and wish to change your selection after we have already approved your petition, you will need to file Form I-824, Application for Action on an Approved Application or Petition."

<sup>38</sup> In calendar year 2023, the CIS Ombudsman received 319 requests for case assistance from individuals impacted by the procedural change. Among the 238 cases that did not involve USCIS error, in 123 cases, petitioners responded to both designated questions, and approximately 86 percent of these 123 cases were filed via ELIS. In 115 cases where the designated questions were left blank, approximately 74 percent were filed on paper via the Lockbox.

<sup>39</sup> For example, if an applicant indicates that they have never served in the military, they will not be prompted to specify their branch of service in subsequent form questions. *See, e.g.*, USCIS Engagement Material, "Our Newest Online Forms Available for Concurrent Filing" (May 19, 2022); [https://www.uscis.gov/sites/default/files/document/outreach-engagements/USCIS Online Filing Webinar-Form I-821D-Consideration of Deferred Action for Childhood Arrivals.pdf](https://www.uscis.gov/sites/default/files/document/outreach-engagements/USCIS%20Online%20Filing%20Webinar-Form%20I-821D-Consideration%20of%20Deferred%20Action%20for%20Childhood%20Arrivals.pdf) (accessed May 6, 2024).

real time.<sup>40</sup> These new technologies eliminate the need for manual intervention, streamlining processes and reducing burdens for both customers and USCIS. For example, the online change of address tool is expected to reduce Contact Center phone inquiries by up to 31 percent, or approximately 1.5 million inquiries annually.<sup>41</sup>

Certain online accounts directly interface with ELIS—one of USCIS’ case management systems used to adjudicate certain benefit requests—enabling petitioners with Forms I-130 processed in ELIS (those who have a receipt number that begins with “IOE”) to access enhanced customer service features.<sup>42</sup> Additionally, ELIS facilitates the seamless electronic transfer of approved Form I-130 petitions to the NVC, eliminating the need for manual relocation of paper-based petitions.<sup>43</sup> Currently, approximately 70 percent of all pending Forms I-130 are in ELIS, and USCIS is working to consolidate Forms I-130 pending in other systems (such as the Computer Linked Application Information Management System (CLAIMS 3)) into ELIS.<sup>44</sup>

- To leverage efficiencies garnered from ELIS and further improve the customer experience, USCIS should develop a self-service tool enabling petitioners with online accounts linked to Forms I-130 in ELIS to request the electronic transfer of their approved petitions to the NVC; and
- Streamline the processing of these requests through automation.

Implementing this self-service option would eliminate the need to file Form I-824.<sup>45</sup> Further, the task of transferring approved petitions to the NVC electronically appears well-suited for automation. Specifically, this post-adjudicative action does not require a discretionary determination. Rather, it involves a straightforward, rule-based process that can be executed using robotic process automation.

These solutions would also alleviate the burden on USCIS resources while granting petitioners the ability to better manage the location of their approved immigrant petitions. For example, the self-

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<sup>40</sup> See USCIS Web page, “USCIS Launches New Online Change of Address Tool” (Oct. 12, 2023); <https://www.uscis.gov/newsroom/alerts/uscis-launches-new-online-change-of-address-tool> (accessed May 6, 2024). See also USCIS Web page, “USCIS Launches Online Rescheduling of Biometrics Appointments” (Jul. 6, 2023); <https://www.uscis.gov/newsroom/news-releases/uscis-launches-online-rescheduling-of-biometrics-appointments> (accessed May 6, 2024).

<sup>41</sup> See USCIS Web page, “Completing an Unprecedented 10 Million Immigration Cases in Fiscal Year 2023, USCIS Reduced Its Backlog for the First Time in Over a Decade” (Feb. 9, 2024); <https://www.uscis.gov/EOY2023> (accessed May 6, 2024).

<sup>42</sup> See DHS, “Privacy Impact Assessment for the USCIS Electronic Immigration System (USCIS ELIS)” (Dec. 3, 2018), p. 4; <https://www.dhs.gov/sites/default/files/2023-04/privacy-pia-uscis056a-elisappendixbupdate-april2023.pdf> (accessed May 6, 2024). See also USCIS Web page, “How to Create a USCIS Online Account” (Jan. 29, 2024); <https://www.uscis.gov/file-online/how-to-create-a-uscis-online-account> (accessed May 6, 2024).

<sup>43</sup> For paper-based cases, once USCIS approves the petition, it typically takes 4 to 6 weeks for the physical petition to reach the NVC. Petitions adjudicated in ELIS are typically transferred electronically to the NVC in a matter of hours. See DOS Web page, “NVC AILA Liaison Committee Meeting,” (Feb. 17, 2021); <https://travel.state.gov/content/dam/vi-sas/AILA/AILA-NVC-meeting-02-17-2021.pdf> (accessed May 6, 2024).

<sup>44</sup> Information provided by USCIS (Mar. 8, 2024).

<sup>45</sup> In 2011, USCIS removed references to Form I-824 from its regulations, envisioning that enhanced online account functionality would render it obsolete. See “Immigration Benefits Business Transformation, Increment I,” 76 Fed. Reg. 53764, 53771 (Aug. 29, 2011). However, more than 13 years later, USCIS is experiencing a surge in Form I-824 filings.

service tool with a limited capacity for making such a change could allow petitioners to correct USCIS error, leading to a reduction in customer service inquiries to both USCIS and the NVC.<sup>46</sup> By automating this process, USCIS could allocate resources to more complex adjudications. If Form I-130 revisions fail to yield clearer responses, providing this tool will act as a safety net for those still encountering challenges.

#### **4. Enable the NVC to retrieve approved petitions from USCIS.**

Unlike petitions that are retained by USCIS, those routed to the NVC can be returned without filing Form I-824.<sup>47</sup> However, the NVC lacks the capability to locate the petition and request it from USCIS,<sup>48</sup> hindering the NVC's ability to correct transfer errors.

To ensure parity between processes and enhance the NVC's visibility into USCIS' workload, USCIS should:

- Empower the NVC to locate and request approved petitions from USCIS, including the ability to retrieve them from ELIS. As USCIS advances its digitization efforts,<sup>49</sup> including facilitating electronic transfer of digitized petitions to the NVC,<sup>50</sup> this enhancement will enable the NVC to resolve more transfer issues without requiring the petitioner to file Form I-824. In turn, this will improve the customer experience by reducing the burden on petitioners who must often coordinate between the two agencies to resolve misdirected petitions.

#### **5. Provide relief for those impacted by the previous routing procedures.**

The temporary departure from past practice and regulatory requirements, coupled with the lack of direct notification to those with pending petitions about the March 2022 processing change, resulted in USCIS retaining thousands of Form I-130 petitions unnecessarily. The updated May 2024 procedures do not address any immediate solutions for those affected by the abandoned processing change, and the technological solutions recommended above, if adopted, will not be available in the near term.

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<sup>46</sup> In calendar year 2023, the CIS Ombudsman received 319 requests for case assistance from individuals affected by the 2022 procedural change. USCIS erroneously processed 81 of these (25 percent), often issuing approval notices indicating retention of the petition despite the petitioner only selecting consular processing. In FY 2021, prior to the 2022 processing change, the CIS Ombudsman received 153 requests for case assistance involving USCIS error in the post-adjudication routing of approved immigrant petitions. Petitioners seeking to correct agency error often receive instructions from the Contact Center to file Form I-824. Unfortunately, petitioners may find that paying a fee to rectify an agency error results in a quicker action than pursuing correction through customer service channels. For example, among the 153 requests reviewed in FY 2021, USCIS took over 350 days on average following the date of approval to correct its error.

<sup>47</sup> USCIS facilitates the return of the approved petition from the NVC once the beneficiary files Form I-485, without requiring Form I-824. Information provided by USCIS (Mar. 8, 2024).

<sup>48</sup> Information provided by USCIS (Mar. 8, 2024).

<sup>49</sup> See generally FYs 2023–2026 Strategic Plan, U.S. Citizenship and Immigration Services, p. 22 (2023); <https://www.uscis.gov/sites/default/files/document/reports/StrategicPlanFY23.pdf> (accessed May 6, 2024).

<sup>50</sup> USCIS is currently working with the NVC on providing consular personnel with access to STACKS—a user interface that allows USCIS employees to view immigration request forms, evidence, and other case content—so that USCIS would not have to ship approved paper Form I-130 petitions to the NVC for petitions outside of ELIS. Information provided by USCIS (Mar. 8, 2024).



Meanwhile, USCIS' continued reliance on Form I-824 to redirect these petitions to the NVC exacerbates its resource challenges and subjects petitioners and their family members to additional filing fees and processing delays. Despite making similar mistakes when completing Form I-130, those affected by the previous routing procedures face consequences that petitioners under the new procedures do not.

To provide more equitable outcomes for petitioners affected by its previous routing procedures and to preserve adjudicative resources, USCIS should take the following actions for those petitions adjudicated while its March 2022 policy was in effect:

- Leverage existing technology to proactively identify and transfer impacted petitions to the NVC without requiring Form I-824. For petitions adjudicated in ELIS, responses to Part 4 (Q. 61 and 62) and the beneficiary's address are electronically captured, enabling the agency to identify approved petitions that responded to these questions inappropriately but meet the new criteria for transfer to the NVC (i.e., beneficiary's physical address on the petition is outside the United States). While USCIS does not electronically capture the necessary data for cases adjudicated in CLAIMS 3, it can identify impacted petitions by those that have a corresponding Form I-824 pending, enabling the agency to course-correct these filings to their intended destinations.
- In other cases where USCIS does not capture the necessary data electronically and there is no corresponding Form I-824 pending, petitioners should be allowed to submit transfer requests through a customer service channel, such as an e-Request or online account inquiry, rather than be required to file Form I-824. Since these paper-based petitions are located at the NRC,<sup>51</sup> USCIS should consider having the NRC take corrective action directly, rather than transferring the file back to the adjudicating office. This approach would significantly reduce the amount of time lost in transferring the file to an already overburdened field office or service center. Establishing and refining this customer service channel will also better equip USCIS to address inquiries concerning approved petitions transferred to the NRC in error.

After proactively identifying or being notified of petitions in need of relocation, USCIS should take action to transfer these petitions to the NVC, being mindful of the NVC's resources and notifying petitioners of the transfer.

## Conclusion

Implementing the above recommendations will not only enhance the overall customer experience but also streamline the transfer process for immigrant visa petitions. By adopting these recommendations, USCIS can effectively address existing challenges and improve efficiency, thereby averting unnecessary delays in reuniting families.

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<sup>51</sup> Although some of these approved petitions may be digitized and viewable in STACKS, NVC employees do not currently have access to STACKS. Once access is provided, USCIS will also need to establish a process to notify the NVC of approved petitions in STACKS that require consular processing.