



the local level contributes to the continuing lack of standardization of all adjudication processes.

COMMENT FROM OMBUDSMAN'S TELECONFERENCE

A caller mentioned that receipt notices have an increasing number of inaccuracies, which can cause problems for establishing the priority date and other subsequent events. 

RECOMMENDATION AR 2007 --10

The Ombudsman strongly endorses a plan whereby employees responsible for quality assurance at the local level receive uniform and comprehensive training in QA procedures. 

- **I-601 Waivers.** The Ombudsman reviewed Form I-601 waiver approval and denial rates for all USCIS domestic and international offices for the last five years. The Ombudsman analyzed the average denial rates for the top five domestic field offices and top five international offices.⁵⁸ The variation in these rates was significant among the offices. While international offices demonstrated a consistent trend upward, the denial rate in similar fiscal years for domestic offices differed. Domestically, denial rates fluctuated with no noticeable trend. For example, at one domestic office where the receipt volume was relatively similar from FY 03 through FY 06, the office's denial rate fluctuated from approximately 53 percent, to 26 percent, to 67 percent, in FY 05, FY 06, and FY 07 YTD, respectively. Although the causes of these fluctuations are likely numerous, in the next reporting period the Ombudsman hopes to analyze the extent to which standardized adjudication criteria might stabilize or destabilize the I-601 waiver denial rate.

To address lack of standardization in adjudications, the Ombudsman encourages USCIS leadership to implement a nationwide program of standardization, as uniform adjudication processing practices and decision-making are imperative. Innovative leadership and effective management oversight are essential elements to achieve this objective.

J. Inefficient or Redundant Processes

In the 2006 Annual Report (at pp. 44-50), the Ombudsman reported on and made recommendations to address these issues under "USCIS Revenue."

⁵⁸ The Ombudsman reviewed I-601 denial rates for the ten field offices, five domestic and five overseas, with the highest number of I-601 receipts.

1. Need for Improved Form Instructions and USCIS Intake Processes

In the Ombudsman's 2006 Annual Report (at p. 46, AR 2006 -- 09), the Ombudsman recommended that USCIS adhere to its regulations and require: (1) application and petition packages to be complete before USCIS accepts them; and (2) that the review of necessary documents take place before a fee is accepted via a thorough pre-screening process. In its 2006 Annual Report Response (at p. 17), USCIS indicated that:

USCIS continues to work to improve the clarity of form instructions to help applicants understand what they will need to file with an application. This greater clarity also helps manage customer expectations with respect to both process and outcomes. However, USCIS believes it is more appropriate to accept applications that meet minimum standards required by law than to extensively analyze applications and reject those that do not contain absolutely every document that may be required. Such extensive review occurs during the actual adjudication process since the need for additional supporting documents may not become apparent until the applicant is interviewed. For instance, these documents may include proof of termination of prior marriages or court documents regarding an arrest. Hence, while to a degree it is consistent with the Ombudsman's theme of up-front processing and local adjudication of many kinds of applications, rejecting applications prior to filing still leaves significant litigation risks as customers can allege that USCIS rejected cases that were complete, and they were prevented from pursuing their cases. This process occurred with a number of legalization cases during the late 1980s and USCIS is still resolving cases where applicants claim they were turned away inappropriately. USCIS has no proof otherwise because the applications were returned to the applicants.

Front-desking was a problem that occurred approximately 20 years ago during the implementation of the Immigration Reform Control Act of 1986. It continues to be cited as a reason the agency is hesitant to engage in more rigorous screening prior to accepting filings. However, current processes at the Chicago Lockbox provide for digitized records of all cases received by the facility whether accepted or rejected. Thus, the one issue of front-desking, *i.e.*, the lack of a rejection notice, is moot. Additionally, the 1986 legalization program had very specific deadlines, whereas no similar cutoffs apply to the vast majority of cases the Lockbox accepts today.

In many stakeholder meetings and teleconferences, the Ombudsman continues to hear concerns about incorrect rejections and an inordinate number of incorrect and/or unnecessary RFEs. During a recent visit to the NBC, the Ombudsman discussed these issues and was

encouraged by the management's awareness of them and the initiatives undertaken by the staff to address both underlying and immediate concerns.⁵⁹

OBSERVATIONS AND STAKEHOLDER COMMENTS FROM THE OMBUDSMAN'S TRIPS AND MEETINGS

If a DORA application is rejected at the Lockbox, there is no communication to the local field office. The rejection only goes to the applicant.



The Lockbox sometimes creates a new applicant file when one already exists for the applicant.



Stakeholders have received rejected applications with another applicant's documents enclosed.



Stakeholders report that they have received multiple receipts for some applications and no receipts for other applications.



If an application is sent to the Lockbox rather than a service center, the Lockbox returns the application to the applicant rather than forwarding it within USCIS.



RECOMMENDATIONS AR 2007 -- 11

For the Chicago Lockbox, the Ombudsman recommends that USCIS:

(1) Implement a procedure so the Lockbox will not accept a new filing if a case already has been denied and a Notice to Appear (NTA) issued;



(2) Institute a process to notify a field office when an application is rejected; and



(3) Implement quality review measures to ensure that errors do not occur in mailings to applicants.



2. Multiple Filings for Foreign Spouses of U.S. Citizens

U.S. citizens petitioning for foreign spouses to join them in the United States are subject to duplicative filing requirements and will pay additional fees until the new fee rule takes effect in July 2007. In response to growing processing delays, Congress passed the Legal Immigration Family Equity (LIFE) Act in 2000, which created the K-3 visa category for foreign spouses of U.S. citizens to obtain a nonimmigrant visa and more quickly join their U.S. citizen spouses in the United States.⁶⁰

⁵⁹ See section III.J.4.

⁶⁰ See generally Pub. L. No. 106-553, 114 Stat. 2762 (Dec. 21, 2000).

USCIS implemented the law to require a U.S. citizen spouse to first file the Form I-130 immigrant visa petition, followed by the filing of a petition used for non-immigrant fiancé(e)s, Form I-129F. However, to file the I-129F for expedited processing of the non-immigrant visa, the U.S. citizen spouse needs to submit a receipt to show proof of the previously filed I-130 and its supporting documentation. Thus, to file for expedited service, the applicant needs to file all documents previously filed with the receipt for the original I-130 and pay an additional fee. USCIS conducts substantially the same security checks and requires approximately the same number of hours to process each form.

However, until the Ombudsman brought this issue to USCIS' attention, the I-129F was processed in 2-3 months, while the I-130 remained pending for many additional months. During the reporting period, it appears that USCIS responded to the Ombudsman's concerns by slowing down processing of the I-129F. The May 18, 2007 processing time for the I-129F at the National Benefits Center (NBC), the only service center that processes these petitions for the K-3, is six months. As of May 18, 2007, the processing time for the I-130 was six months at the California Service Center and fourteen months at the Vermont Service Center. The Ombudsman points out that the NBC processes I-129F petitions for the K-3 and the VSC and CSC process the I-130 petitions. If the processing times for I-129Fs and I-130s are the same, as at the CSC, the LIFE Act provision providing for the fiancé(e) visa as a faster alternative to the I-130 process is meaningless.

In the 2006 Annual Report (at p. 47, AR 2006 -- 10), the Ombudsman recommended that USCIS consolidate these petitions and rapidly process them for spouses and children of U.S. citizens. In its 2006 Annual Report Response (at p. 18), USCIS indicated "[a]lternatives are under review." In its May 30, 2007 final fee rule, USCIS eliminated the I-129F fee for K-3 status.

3. Application Support Centers and Fingerprinting of Applicants

As a routine part of the immigration benefits application process, customers visit USCIS contract facilities (ASCs) to have biometrics captured (fingerprints and photographs).⁶¹ In FY 06, USCIS submitted over three million fingerprints to the FBI for criminal history checks at a cost of more than \$48.8 million. The Ombudsman believes many of these were unnecessary, repeat fingerprint checks.

Additionally, USCIS continues to operate without "wrap around" security checks, *i.e.*, real time security updates from the law enforcement community on applicants who violate criminal laws. Wrap around security checks contemplate an arrangement with law enforcement to inform USCIS of any new security concerns that arise without USCIS needing to request additional biometrics or name checks from the applicant. In its 2006 Annual Report Response to AR 2006 -11 (at p. 18), that USCIS implement wrap around checks, which would provide the agency with real time security updates from law enforcement on applicants who violate criminal laws, USCIS stated:

⁶¹ There are approximately 130 ASCs located in separate sites or co-located with USCIS offices.

As the Ombudsman is aware, USCIS has been asking for this capability for a number of years. ‘Wrap back’ will give access to continuing data about a person’s criminal record, eliminating the need for multiple queries and the risks associated with the lack of real-time knowledge of security updates. For a number of years, USCIS has been in discussions with the FBI about ways to provide this ability. USCIS does now receive “wrap back” or “recurrent vetting” service from US-VISIT as it submits fingerprints to IDENT, based on the information stored within IDENT. When “wrap back” functionality is available, USCIS expects to take advantage of the service.

It is unclear whether USCIS actually has wrap-back capability, as the agency both is asking for the capability and receives the service from US-VISIT. In addition, it appears that USCIS is focused on providing the FBI name check program with resources, rather than concentrating on the necessary wrap-back service.

It often takes USCIS longer to adjudicate an application than the 15 months the agency considers fingerprint results to be valid. Consequently, applicants often must return to the ASC to have fingerprints retaken. Although USCIS currently has fingerprint storage capability, it cannot retrieve the prints from storage. If USCIS had this capability, it would reduce the need for applicants to visit ASCs multiple times for repeated fingerprint collection. In AR 2006 – 12, the Ombudsman recommended: (1) improvements in USCIS fingerprint storage and retrieval capabilities; and (2) use of innovative technology that allows for capture of flat fingerprints rather than traditional rolled prints.

In its 2006 Annual Report Response (at p. 19), USCIS stated that: (1) its Biometrics Storage System (BSS), the “central repository for all biometrics captured . . . should be implemented by early 2008”; (2) it is working with other federal agencies on capturing flat fingerprints and will adopt this capability when “the technology and equipment meet requirements that are cost effective”; and (3) the testing and system enhancements of the Biometric Check Service (BCS) should be “completed and implemented early in [calendar year] 2007.”⁶²

In recent conversations with the Ombudsman, the agency indicated that the BSS would be implemented in the summer of 2007. The Ombudsman is concerned that USCIS does not have clear deadlines on this extremely important program. Again, the Ombudsman urges expeditious implementation of the BSS to address this processing deficiency

4. Initial Case Screening and Widespread Issuance of Requests for Additional Evidence

USCIS issues requests for additional evidence (RFEs) in approximately 50 percent of family-based green card applications filed at the Chicago Lockbox and processed at the NBC, as shown in Figure 13. The issuance of receipt notices is tied to each field office’s annual budget

⁶² In addition, USCIS’ 2006 Annual Report Response (at p. 10) states that the “[t]esting and required system enhancements should be completed in late April with deployment beginning in May 2007.”

and staffing requirements. The more receipt notices issued to applicants living in the office's jurisdiction, the more resources that field office will receive from headquarters the next year. Thus, USCIS has no incentive to reject applications, regardless of their completeness, and instead will ask applicants for additional information through RFEs.

Issuing RFEs and denials is more time consuming for USCIS than rejecting an application at the outset or granting a benefit to an eligible customer who has filed a complete application.

COMMENTS FROM OMBUDSMAN'S TELECONFERENCE

A caller asked if there is a checklist that the service centers use when reviewing green card applications. If so, could applicants obtain a copy of it?



One caller indicated that it is unfair for USCIS to lower response time if the agency is not adjudicating the RFEs faster once they are received.



Several callers indicated that RFEs require information that already was submitted to the agency.



A caller said that if the case is approvable or deniable outside of the need for an RFE, the case should be approved or denied without it.



A caller mentioned that RFEs are often boilerplate and it appears that nobody has read the application. Moreover, she sent two identical "L" applications for the same company. One was approved and one got an RFE.

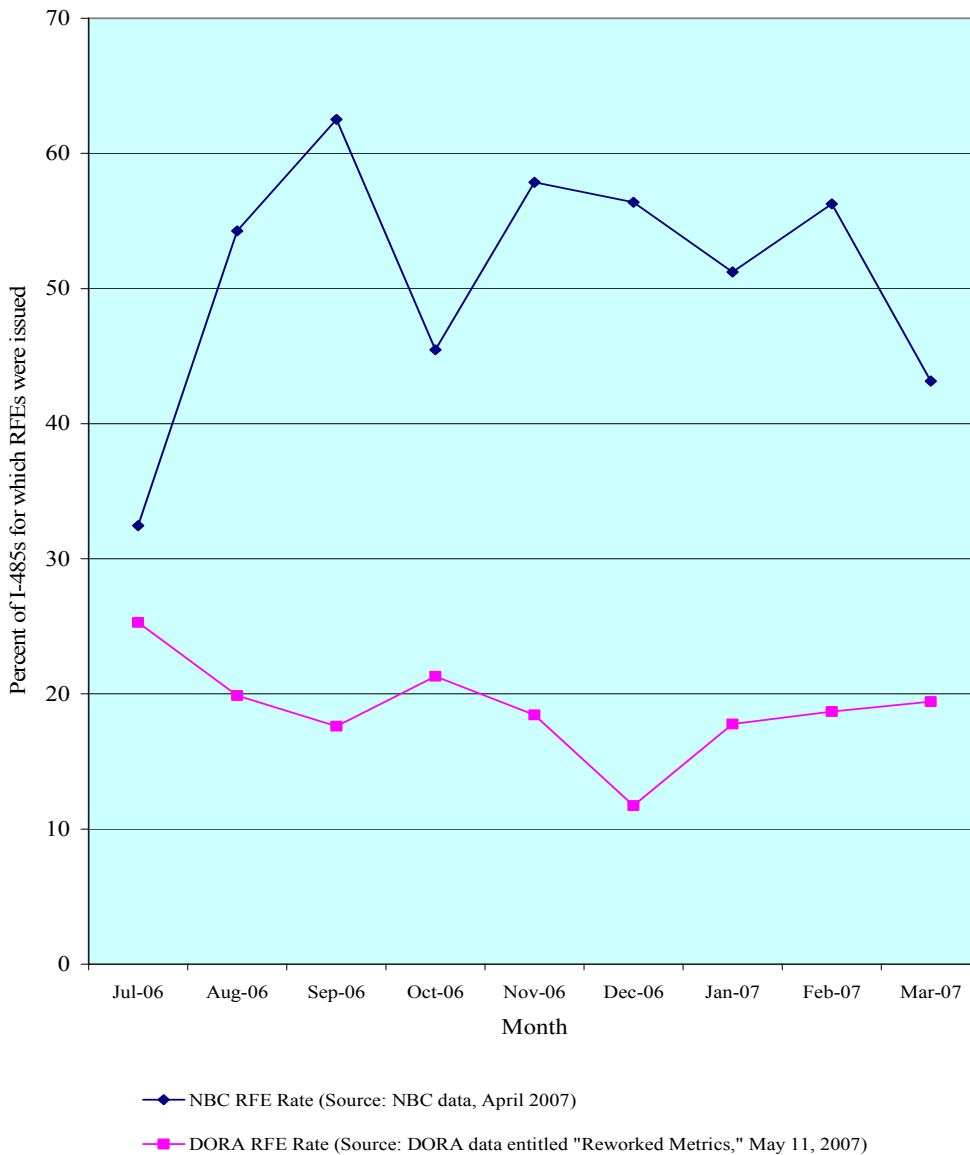


Generally, customers file family-based green card applications with the Chicago Lockbox. If accepted, the applications are forwarded to the NBC for administrative processing and then to a field office for interviews and final adjudications. At each stage of the application process, additional documents may be requested. The agency asks for many of these documents at the end of the process, rather than at the beginning before it accepts the application. Moreover, if the NBC issues an RFE, that request should cover all of the documents and information required for initial case completeness.

The Ombudsman is concerned that USCIS is issuing RFEs erroneously and requesting, for example, documents that were already submitted. In other cases, the filing instructions may not be clear and incomplete cases are accepted at the Chicago Lockbox when they should be rejected. Due to the extended processing time with RFEs, individuals also may be required to pay additional fees for interim benefits and/or make multiple visits for biometrics capture. Senior leadership at the NBC is aware of this problem, and the Ombudsman is encouraged by the efforts to reduce the issuance of unnecessary and unclear RFEs.

USCIS recently announced plans to reduce the time provided to customers for responding to RFEs.⁶³ This change may result in more denials of incomplete applications, but it does not address the problem of accepting incomplete applications at the outset. USCIS can solve this problem by a rigorous up-front review of the application.

Figure 13: Comparison of RFE Issuance by the National Benefits Center and the Dallas Office Rapid Adjustment Pilot Program



In the coming year, reducing the issuance of RFEs should be a priority for the agency. Up-front review and processing of cases is one option that mitigates the issuance of RFEs for incomplete cases.

⁶³ See "Removal of the Standardized Request for Evidence Processing Timeframe," 72 Fed. Reg. 19100 (Apr. 17, 2007).

RECOMMENDATION AR 2007 --12

USCIS currently uses substantial resources to issue and review RFEs for information that already was submitted or was unclear in the original application instructions. While the agency in its 2006 Annual Report Response (at p. 17) indicates that it continues to work to improve the clarity of form instructions, the Ombudsman recommends that USCIS develop:

(1) Clearer application instructions so that applicants provide the required documentation at the outset;

(2) Transparent and easily understandable rejection criteria; and

(3) RFEs written in simple, more direct language with less legalese and personalized to the recipient for the limited instances in which RFEs would be issued.

K. Coordination and Communication

In its 2006 Annual Report Response (at p. 14), USCIS indicated that “[c]oordination and communication between and among all USCIS offices has improved as technology [expanded].” The Ombudsman commends USCIS for providing “a great deal more information . . . to officers today than even just a year ago.” While there has been improvement, the issues and concerns expressed in the Ombudsman’s 2005 and 2006 Annual Report mostly remain. Coordination and communication continues to be one of USCIS’ biggest challenges, as observed by the Ombudsman during visits to field and service center offices during the reporting period.

1. Field Offices/Service Centers

Ineffective coordination and communication between field offices and service centers continues to be a serious and pervasive problem. Offices are not standardized in how they function, and communication between offices is difficult at best. Moreover, unconnected information systems inhibit employees from getting the information in a timely way to resolve issues and adjudicate cases. Lack of timely information inevitably causes processing delays and customer dissatisfaction. For example, each of the four service centers and the NBC continue to operate separate computer Local Area Network (LAN) systems with no connectivity to each other. Applicants file employment-based green card applications with one of two service centers, which forward applications requiring interviews to field offices nationwide. The field offices do not have access to the service center’s LAN system and, therefore, cannot: (1) update the LAN record with case completion information; or (2) connect to the LAN system to produce the green card. The field office must return the paper file to the service center to complete these tasks.

The investment must be made to equip all offices with the tools necessary to well serve the public. For example, the Ombudsman has suggested numerous times that USCIS establish telephone-based direct link connections into the LAN at field offices to allow them to do the