

STATEMENT
OF
WILLIAM R. (BILL) YATES
EXECUTIVE CONSULTANT
BORDER MANAGEMENT STRATEGIES
REGARDING
USCIS FEE SCHEDULE
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Introduction

Madam Chairwoman, members of this distinguished subcommittee, thank you for the opportunity to testify before you today. My name is Bill Yates and I am an Executive Consultant of Border Management Strategies, a company that provides immigration and border security expertise to both the public and private sectors. Prior to my involvement with Border Management Strategies I spent over 31 years with the Immigration and Naturalization Service and U.S. Citizenship and Immigration Services, serving in a variety of officer and management positions in both enforcement and service disciplines. I began my career as a special agent at Newark, NJ in 1974, and at the time of my retirement, September 29, 2005, I was the senior career official at USCIS. It is a privilege to share with this subcommittee my professional experience with, and insight into, the fee funding process, the reasons for the steep fee increases, the challenges USCIS faces in breaking the backlog cycle, and the need to transform core business practices.

Growth in Application Fees

The fee schedule change that went into effect last month is extremely significant for USCIS because it is the first time that the fee schedule will actually recapture the full costs of USCIS operations. I am familiar with the previous fee schedule changes beginning with 1998 and each of those prior fee increases failed to fully recapture the full cost of doing business. In each instance from 1998 through the 2005, the amended fee schedule reflected the results of compromises, not calculations. Since FY 2002 USCIS has relied upon its premium processing fee revenue to meet its base financial obligations. Those funds were intended to be used for business process improvements, but were necessarily diverted to pay for new background checks following the terrorist attacks of September 11, 2001. At one point during the third quarter of FY 2002 we calculated that the new background checks required the redeployment of over 800 adjudication officer work-years, and increased expenditures by over \$10 million dollars per month. The fee schedule change in 2004 did include funds needed to pay for background checks, but premium processing revenues continued to be used to pay for other underfunded programs, including a portion of the backlog reduction efforts, and for the infrastructure requirements needed for USCIS to become a stand-alone agency as intended by the Homeland Security Act of 2002.

Certainly, the fee increases beginning with 1998, when fees increased by an average of 76%, have been high, and high fees represent a significant burden to many USCIS customers. The reasons for these steep increases above the standard inflation costs are due predominately to;

- Growth in non-fee and restricted fee application processing costs requiring significant surcharges being placed on fee paying customers to cover those costs.
- Creation of new programs and components, such as the National Records Center (NRC), the National Customer Service Center (NCSC), the Missouri Service Center (MSC), and the Fraud Detection and National Security Office (FDNS)
- Implementation of the Application Support Center contract for fingerprint and more recently biometrics capture
- Implementation of new background checks following the terrorist attacks of September 11, 2001
- Increases in building and personnel security costs due to the threat of terrorism.

- Creation of USCIS as a stand-alone agency within the Department of Homeland Security
- Increased emphasis on eliminating application and petition backlogs
- Operational inefficiencies and maintenance costs for archaic legacy information systems

Application and petition backlogs

Backlogs at US Citizenship and Immigration Services (USCIS) have developed for a number of reasons, some predictable, and some resulting from unpredictable events. Massive surges in application receipts, poor computer systems, paper-based labor-intensive processes, a flawed funding system, unfunded mandates, inefficient business processes, post September 11, 2001 security check processes, Federal Bureau of Investigation (FBI) background check delays, lack of a scalable workforce, dissolution of the INS, and an immature Department of Homeland Security (DHS) that has struggled with immigration regulatory processes, have either contributed to backlogs or impeded efforts to eliminate them.

Despite the aforementioned USCIS has made dramatic gains in reducing backlogs and wait times for applicants for benefits over the past three fiscal years, and many of the agencies identified above have contributed substantially to that success. Unfortunately, while these achievements are both significant and welcome, the gains are not the result of strategies that will prevent the growth of future backlogs. That is because eliminating the backlog cycles at USCIS requires identification of the chain of responsibility among the USCIS, DHS, Department of Justice (DOJ), FBI, OMB, Office of Personnel Management (OPM), and the United States Congress. As with any chain, ignore any of the links and failure is the likely result.

What harm is caused by backlogs

The consequences of backlogs are varied and often severe; prolonged family separations, lost opportunities for families to migrate to the United States; companies being unable to get the permanent or temporary workers they need when they need them; permanent residents being denied employment opportunities reserved for citizens; and the lives of unattended minors and relatives of refugees and asylees being placed at risk. Academicians and immigration statisticians are hindered in their attempts to provide meaningful analysis of migration trends because backlogs can lead to incorrect conclusions. The backlog cycle¹ can decrease or increase the numbers of individuals who immigrate, or who become citizens during specific periods of time. Because of this it becomes extremely difficult to draw conclusions or prepare long-term forecasts critical to inform a variety of public policy matters.

Backlogs are self generating. Applicants awaiting decisions on adjustment of status applications may need to file several applications for extensions on temporary stay or for interim benefits including, work authorization or foreign travel authorization. Backlogs also cause severe stress among USCIS employees and their families as employees are routinely required to work overtime during the workweek and often on weekends, as well. Because of a succession of workload surges during the past 10 years forced overtime has become a fact of life for many USCIS employees.

¹ Backlog cycle refers to a repeating pattern of growing volumes of pending applications with receipts far exceeding completions followed by a period of backlog elimination efforts during which time completions far exceed incoming receipts.

The DHS Ombudsman argues that backlogs create national security vulnerabilities. He notes that significant numbers of applicants for adjustment of status will ultimately be deemed ineligible to adjust their status, but because of backlogs applicants may remain in the United States for long periods of time before a final determination is made. Although USCIS background check procedures ameliorate the risk identified by the Ombudsman, it is true that backlogs create opportunities for ineligible aliens to remain in the United States for extended periods of time. It is also true that permitting ineligible applicants to abuse the system to extend their residence in the United States is not an acceptable condition.

Why hasn't USCIS been able to eliminate all backlogs

Backlogs are generally event-driven. The current backlog cycle has its roots in the Immigration Reform and Control Act of 1986 (IRCA). That Act generated waves of application surges that overwhelmed the adjudicative capacity of the INS/USCIS. Ironically, it was not the initial legalization wave that overwhelmed INS records and adjudicative processes, as well as FBI fingerprint clearance processes. Instead, it was secondary wave consisting of lawful permanent residents who began filing for naturalization during the mid to late 1990s in record numbers that exceeded the infrastructure capabilities of the INS. Between 1981 and 1990 INS received 2.4 million applications for naturalization. During the 1991 to 2000 period INS received 7.4 million applications, a 208% increase.²

In addition to suffering from its own processing system failures the INS was further hampered by the inability of the FBI to timely process fingerprint check and name check background requests. From the mid 1990s forward immigration application processing would increasingly be negatively impacted by processing delays associated with background checks. The fingerprint check process with the FBI, however, would evolve to become a model process that is better, faster, and more secure. The extremely efficient live scan fingerprint system featuring electronic capture and transmission between USCIS and the FBI achieves response times in minutes or hours as opposed to months for the old paper and ink process it replaced. Unfortunately, name check processes have become even more problematic than during the 1990s because the vulnerabilities are now better understood, but the solutions remain complex and labor intensive.

INS made substantial progress on backlogs during FY 2001, but following the terrorist attacks the FY 2002 focus shifted from backlog reduction to enhanced identity verification efforts. Adjudicators were fearful of approving applications because no one knew which application could contain the next potential terrorist. The Attorney General ordered mandatory Interagency Border Inspection System (IBIS) checks on all applicants for benefits. DOJ also decided to use INS adjudication officers to conduct the National Security Entry-Exit Registration System (NSEERS) interviews. In addition to the hundreds of adjudicators reassigned to conduct background checks, hundreds more were reassigned to conduct NSEERS interviews. Then, in November 2002, INS learned that it naturalized an individual suspected of being a terrorist. Subsequent reviews revealed that INS had received two negative responses from the FBI in response to routine background check inquiries despite the existence of FBI investigative records. INS ordered field offices to halt work on a large volume of adjustment of status and naturalization applications, reviewed the incident with the FBI then returned approximately 2.6

² See 2004 Yearbook of Immigration Statistics, Table 31, Petitions for Naturalization Filed...Fiscal Years 1907 to 2004

million name checks to the FBI for rework. Unfortunately, the rework resulted in processing delays for hundreds of thousands of customers.

As INS' Immigration Services Division was preparing to become a stand-alone agency in DHS on March 1, 2003, it was still growing backlogs, still dealing with a workforce that feared making a wrong decision, still underfunded, and now lacked an administrative support infrastructure since DHS had assigned all INS administration and IT support programs to ICE. However, by the end of its first year as an agency within DHS, USCIS stopped the growth of backlogs. Within the next six months it was reducing backlogs. By the end of FY 2006 it had met a majority of its goals to reduce processing times to six months or less. During the same period that USCIS reduced backlogs it improved the integrity of its processes. These gains were made possible only through Congressional appropriations as well as premium processing fee funds.

Building integrity into the adjudicative processes

One new construct that initially caused a fair amount of disagreement within and DHS was the creation of the Fraud Detection and National Security (FDNS) office. Some argued that it represented a USCIS effort to establish its own investigative force in direct competition with ICE, and that it did not belong in a service organization. I strongly disagree. FDNS was established to assist adjudicators make the correct case decisions through evidentiary verification activities. If fraud is identified FDNS will review the record to determine whether the suspected fraudulent application is part of a broader conspiracy or a single party fraud case. Fraud cases are referred to ICE for criminal investigation and prosecution. FDNS may continue to offer support during the investigation and prosecution stages. FDNS enhances ICE's capabilities by eliminating referrals for investigation based upon mere suspicion and by offering expertise in adjudications requirements and case support activities.

FDNS also fills the gap between USCIS responsibilities and ICE responsibilities. When ICE initiates a conspiracy investigation its goals are to stop the criminal enterprise, prosecute the principals, seize assets, and initiate removal proceedings where appropriate. It is not an ICE responsibility to adjudicate the hundreds or thousands of applications that may individually be suspect. That responsibility rests with USCIS and each and every decision to deny must stand on its own review of case facts. It is FDNS' responsibility to bridge that gap by assisting adjudicators to obtain the evidence needed to render the correct decision on each and every application or petition filed. FDNS also assists in resolution of background check hits, and conducts sampling surveys of the various benefit processes to identify high risk processes.

In addition to the obvious benefits described above, the work of FDNS sends a clear message to USCIS employees—that agency leadership cares about the integrity of the adjudicative processes. This is invaluable for the long-term health of USCIS.

How can the backlog cycle be broken

USCIS defines a backlog as the volume of pending application work that exceeds the cycle time (stipulated processing time) for that particular adjudication. Since different benefit applications have different evidentiary and processing requirements cycle times necessarily vary by form type.

Backlogs develop when the *load* represented by the volume of applications and petitions (converted to labor hours) filed with the agency exceed its adjudicative *capacity*. Because application volumes or *loads* can be converted into hours of required adjudicative effort, and because the *capacity* of the USCIS workforce can also be converted into hours of available adjudicative effort, the solution to backlogs is to ensure that the adjudicative *capacity* meets or exceeds the *load* at all times.

Since both the *load* and *capacity* can be accurately calculated the only remaining variable in eliminating backlogs is *utilization*. USCIS must manage or utilize its adjudicative capacity such that it directs sufficient hours within its overall *capacity* against each and every form type so that it effectively meets the *load*. For example, if the total load represented by all of the FY 2007 applications and petitions is 12 million hours of adjudications work, USCIS must possess the capacity and must manage the dedication of 12 million hours to timely complete all FY 2007 filings.

Workload calculations do not present challenges to USCIS. IT possesses the expertise to accurately determine the *load* that any application surge will create. It also possesses the expertise to determine its adjudicative *capacity*. The principal challenges for USCIS include; forecasting surges, creating a scalable workforce to meet increased and decreased load demands, managing its capacity so that it operates as efficiently and as effectively as possible, gaining access to the funding authorization before a surge hits, eliminating the current practice of paper-based adjudication plus electronic-based adjudication of the same application in favor of a single electronic-based adjudication.³

USCIS' backlog elimination efforts to date have been made more difficult because backlogs, employee attrition rates, and filing surges do not occur uniformly throughout its 250+ offices. It may have a capacity surplus in one office and a capacity deficit in another. Statutes, government rules, customer concerns, and paper intensive processes combine to limit its ability to move work from one office to another. Details of employees from offices with greater capacity to ones with less capacity, as well as mandatory overtime, have become routine management tools, however, details are very costly, disruptive to employees' lives, limited by available office space, and may result in lower quality adjudications. Agency managers have reported that overtime and employee details to backlogged offices frequently result in diminishing returns as employee burnout leads to increases in errors. Adjudicative costs can rise steeply due to overtime payments and due to the amount of rework needed on partially-completed cases⁴.

One of the most significant issues confronting USCIS in effectively managing load, capacity, and utilization is application surges⁵. *Surges* are a fact of life for USCIS, and any plan to prevent

³ The dual adjudication process adopted by the INS and maintained by USCIS is inefficient. When INS introduced the CLAIMS 4 Naturalization electronic processing system agency leadership was promised efficiency gains of 25% or more. Unfortunately, processing times actually increased by approximately that amount because the system efficiencies were more than cancelled out by the requirement that the adjudicating officer continue the full paper adjudication and then adjudicate the case in the system as well.

⁴ Partially-completed casework typically involves continuing a case without decision due to an eligibility issue that has been discovered during the interview or case review process. When a detailed officer returns to her home office it is a common occurrence that these partially completed cases will require reassignment to another officer who will then review the entire record again to become familiar with the case facts and to be certain that the first reviewer did not miss any key issues or evidence.

⁵ Application surges result from a variety of factors including new legislation, statutory numerical limitations, grants of temporary protected status, reactions to proposed fee changes, modified processing requirements or changes in

backlogs must have an effective surge response plan. To deal with surges USCIS must have certain elements of its infrastructure scalable⁶ as well as a scalable workforce.

Identifying the chain of responsibility

Even if USCIS accurately forecasts the timing and increased workload of a surge, it still may not be able to timely process the new workload without help from its partners.

- DHS, OMB, and Congress must provide the funding authority to expand USCIS' adjudicative capacity⁷, and
- DHS and OMB must facilitate the timely publication of necessary rules and notices in the Federal Register, and
- FBI must have the capacity to process greater volumes of biometric and biographic background checks,⁸ and
- USCIS' operating plan must include scalable contracts for mail processing, file creation, data entry, biometric capture, records storage, IT services, and facilities expansion. USCIS must review plans with its contractors to ensure viability and must develop its own plans for a scalable workforce and scalable facilities or develop a virtual office⁹ that can obviate the need for space expansion

The current funding system is flawed and can lead to backlogs

Fees have long been charged to petitioners and applicants for immigration benefits, but the decision to require that USCIS be totally dependent on fees is relatively new. There isn't anything conceptually wrong with requiring that USCIS recapture the costs of administering the adjudications program, however, USCIS and its customers are vulnerable to the current bureaucratic processes and appropriation policies.

Although USCIS is a fee funded agency it does not have access to fees except through the annual appropriation process, or through the very inefficient and unpredictable reprogramming process. Workload surges because of legislation or special programs such as TPS may generate tens or hundreds of millions of dollars in new fees, but USCIS may not receive Congressional authority to access those funds. This scenario occurred in 2000 when Congress passed the Legal Immigration Family Equity Act (LIFE Act). That Act generated over one million additional applications with fees, but because the legislation did not authorize INS to access the revenue, and because a subsequent reprogramming request was denied by Congress, INS had to hold the applications until such time as it received funds needed to adjudicate the additional caseload.

public policy. The annual commencement of the H-1B filing period on April 1st, is an example of a predictable surge in petitions. A new grant of temporary protected status may be unpredictable.

⁶ Creating a scalable infrastructure is particularly difficult for a government entity. However, USCIS developed its Application Support Centers (ASC) as scalable fingerprint and biometric identification centers. The ASCs are contract facilities with contract staff, but each such facility has on-site government oversight. The performance record of these facilities is excellent.

⁷ The mere fact that USCIS collects application fees and deposits them in its Examinations Fee Account does not mean that it can access those funds. DHS, OMB and then Congress must approve any effort by USCIS to increase its funding—a process that may be blocked, delayed, or simply ignored at any step.

⁸ The FBI conducts both fingerprint checks (biometric) and name checks (biographic) for the USCIS. Fingerprints provide criminal history information. Name checks ascertain whether ineligibility information exists in FBI records or whether the applicant is the subject of an ongoing investigation by the FBI.

⁹ A virtual office can be created by developing the capability to move an application electronically to an adjudications officer regardless of their physical location. Work-at-home programs and relocating certain applications from offices that lack sufficient capacity to others that possess excess capacity will be enhanced.

Access to LIFE Act fees deposited in the Examinations Fee Account was not authorized by Congress until the following fiscal year.

The current fee system creates vulnerabilities for USCIS

The non-fee, and Congressionally-restricted fee application work of the USCIS now amounts to hundreds of millions of dollars in costs annually. The non-fee applications include all asylum applications, refugee applications, military naturalization applications, and fee-waiver applications. Congress has limited by statute the fee paid by applicants for temporary protected status to \$50, covering only a small fraction of the true cost of that adjudication. The financial liability that these non-revenue generating applications create for the USCIS makes it very vulnerable to increases in non-fee applications and/or decreases in fee applications given the significant surcharge placed on each fee application. As USCIS reduced its adjustment of status backlogs during FY 2005 and FY 2006 it realized that it would receive substantially fewer requests for employment authorization. I recall that we estimated a reduction in fee revenue of between \$50 to \$60 million dollars. The financial ramifications were significant because each of those employment authorization application fees carried a large surcharge that was needed to fund asylum, refugee, military naturalization and other non-revenue generating workloads.

Transforming USCIS business processes and IT systems

The future success of USCIS requires that it transform its business practices so that it ends the current dual-adjudication process (paper and electronic), creates a central view or account that contains complete immigration history information, offers customers multiple channels for accessing information and filing, and develops a robust inventory and case management system.

Although it is frustrating that these capabilities do not exist today we should also recognize the progress that USCIS has made during a very difficult time with severe funding constraints.

Business process improvements that have been initiated include;

- Development of the lock-box initiative with the Treasury Department to deposit fees quickly and to enter application data into a national tracking system
- Case tracking on-line
- Electronic forms distribution
- A web site that provides outstanding information and research capabilities
- Transparency of its operations by providing on-line access to the Adjudicator's Field Manual
- Transformation of the Application Support Centers from fingerprint centers to biometric data capture and identity verification centers.
- Improved processes for permanent residents who need to replace a lost or expired permanent resident card (green card)
- Development of the Fraud Detection and National Security (FDNS) program to assist adjudicators in evidentiary verification efforts, and to assist ICE by identifying, criminal fraud conspiracies, and individuals who pose public safety and/or national security risks
- Digitization of immigration records supporting both long-term storage needs and simultaneous availability of records to all three immigration agencies

- Development of analytical tools to accurately measure workloads in each and every office for staffing purposes, and zip code analysis of application receipts to ensure that offices are located where customers actually reside.

In addition, USCIS is currently engaged in a number of active pilot projects to test establishment of customer accounts, enumeration and tracking options, records digitization, and revised adjudication procedures.

The Information Technology (IT) myth – *IT can eliminate or prevent the growth of backlogs*

USCIS business processes cannot be transformed into efficient, effective, and fraud resistant approaches without dramatic improvements in its IT capabilities. Conversely, building new relational databases and system interfaces will accrue only very modest gains unless business practices are transformed.

USCIS processes remain primarily paper-based, and even its electronic application filing opportunities require the customer to mail supporting evidentiary materials in paper format. Agency rules require business petitioners to file extensive paperwork with each and every petition to prove that it is a legitimate business capable of paying the proffered wages. This wastes the customer's time, increases the customer's preparation costs, increases the length of time the adjudicator spends reviewing evidence, and increases file storage costs as the same corporate reports and financial documents may be stored in thousands of separate petition files.

As the DHS agency responsible for immigration records USCIS also has the responsibility to make those records available to ICE and CBP when needed. This requires not just digitizing records but also creating the business rules and governance rules with respect to maintenance and updating of record information.

USCIS faces a complex set of tasks in its efforts to transform both its business processes as well as its IT systems. Fortunately, it is well-positioned to move forward with that effort now that backlogs have been reduced and the premium processing funds can be reserved to fund transformation efforts.

Recommendations

My first recommendation is that the new fee schedule remain in place. The revenue implications for USCIS would assuredly curtail business transformation efforts with long-term negative implications for all USCIS customers. I do believe that by transforming business and IT processes USCIS can reduce its overall operating costs, and this may support lower fees in the future or at least curtail the rate of fee increases beyond the normal inflation-based increases. USCIS faces a complex set of tasks in its efforts to transform both its business processes as well as its IT systems. Fortunately, it is well-positioned to move forward with that effort now that backlogs have been reduced and the premium processing funds are available to fund long-term improvements.

With the new fee schedule in place USCIS can use the resources generated by the premium processing fees to fund its transformation efforts. Those funds should be protected or reserved for that purpose.

To ensure success of its efforts to break the backlog cycle and to transform its business practices I also recommend that;

- USCIS develop a surge capacity plan and require the same from its contractors
- USCIS continue efforts to eliminate paper, eliminate redundant evidentiary requests, and establish processes for electronic verification of application and petition data
- USCIS implement its transformation efforts in concert with CBP and ICE as all three immigration agencies rely upon USCIS application and petition data, and records systems
- USCIS in concert with the DHS CIO develop IT systems that provide inventory control, case management, case status, and address information, including a capability to populate or flag multiple DHS systems with change of address data
- Congress should consider funding new mandates until such time as new fees can be implemented, or in the alternative, develop a process where funds will be appropriated up front, but must be repaid as the revenue is generated through fees
- DHS develop the capability to efficiently review and publish regulations and regulatory notices and this capability should be sufficiently robust that it not break down during leadership changes at the Department
- OPM assist USCIS in developing a more flexible workforce (position classification for temporary or part-time workers) that can expand and contract to deal with workload shifts
- USCIS improve its officer training to achieve its objective of timely and consistently accurate adjudications
- Background check process delays need to be eliminated
- A decision needs to be made concerning how long an application may be held in abeyance for suspicion of ineligibility, and procedures should be published identifying who has authority to suspend an adjudication and for what period of time
- Background check wrap-back functionality needs to be incorporated into the background check systems so that USCIS is automatically notified if potentially disqualifying information is obtained by intelligence or law enforcement agencies subsequent to a USCIS background check request

Thank you, Madam Chair and members of this subcommittee. I look forward to answering your questions.