WASTED VISAS, GROWING BACKLOGS

HEARING

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW

OF THE

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WASTED VISAS, GROWING BACKLOGS

WEDNESDAY, APRIL 30, 2008

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP,
REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:30 p.m., in Room 2141, Rayburn House Office Building, the Honorable Zoe Lofgren (Chairwoman of the Subcommittee) presiding.

Present: Representatives Lofgren, Gutierrez, King, Gallegly, Lungren and Gohmert.

Staff Present: Ur Mendoza Jaddou, Majority Chief Counsel; Tracy Hong, Majority Counsel; Andres Jimenez, Professional Staff Member; and George Fishman, Minority Counsel.

Ms. LOFGREN. The hearing of the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law will come to order. First, I'd like to offer my apologies for my tardiness. I had another obligation with the Speaker that went longer than expected. I'd like to welcome everyone to this hearing to examine the consistent failure of our immigration agencies to issue all the family and employment-based immigrant visas that are authorized already under a law each year, despite the ongoing demand for such visas. I think it is a little bit ironic that in a hearing to examine why agencies cannot issue visas on time, we did not timely receive the testimony from the agencies before us today. We only received the Department of State testimony at a little after 5 last night, the USCIS at a little after 6 last night with the revised testimony at 9 this morning. And I would just like to ask—the Rules of the Committee require the submission of testimony substantially prior to the day before. I can recall a time when Mr. Sensenbrenner refused to allow the then Commissioner of Immigration to even testify because his testimony was late. I'm not going to do that today, but in the future I expect the testimony to be delivered in accordance with the rules.

There are a limited number of visas available each year to immigrate to the United States, a floor of 226,000 preference visas per year for family-based immigrants and 140,000 per year for employment-based immigrants. Each year the backlog of people waiting to immigrate legally to the United States grows larger. Approximately 4 million family-based immigrants are believed to be caught in the legal immigration backlog today while another 400 to 500,000 are believed to be caught in the employment-based backlog. Despite these growing backlogs, the USCIS and Department of State regu-

larly fail to issue the legally authorized number of immigrant visas each year. They've only met or exceeded the floor of a family-preference visa in 5 out of 16 years and only 7 out of the 16 years for employment-based visas since '92.

Most recently, the Department of Homeland Security Office of Immigration Statistics observed in its annual flow report for U.S. legal permanent residents that legal immigration decreased by 17 percent in 2007, quote, due primarily to application processing issues at USCIS, unquote.

To date there has been little public examination of the reasons for the ongoing failure to issue the legally authorized number of immigrant visas each year when there is a clear demand by qualified applicants for these visas. The only recent examination of this problem is by the USCIS ombudsman in its 2007 annual report, which found that immigrant visas have gone unused due to gaps in the accounting of cases by USCIS, USCIS not processing enough pending applications in a timely manner and, finally, the imprecise art, if it can be called that, of predicting work flows and demand surges at the three Federal agencies who each play a role in adjudicating applications, the Department of State, USCIS and the Department of Labor.

My colleague, the former Chairman of the Judiciary Committee, Congressman Jim Sensenbrenner, and I have developed a proposed legislative fix to not only recapture these unused visas but also to reform the process that forces us to lose the visas for future use.

I look forward to the testimony today to help us better understand the problems that face the agencies charged with issuing visas so that we may not only address the problems with an appropriate administrative solution, but also determine whether our proposed legislative fix is the right legislative tool to prevent the loss of visas in the future.

I would now recognize our distinguished Ranking Member, Steve King, for his opening statement.

Mr. KING. Thank you, Madam Chair. And although the topic of this hearing is wasted visas, I have to state that the number of legal immigrants being admitted to the United States in recent years tells a different story. Legal immigration is booming. More than a million green cards per year are being issued year in and year out. This level far exceeds what was anticipated when the 226,000 number for family-based preference green cards and the 140,000 number for employment-based preference green cards was set by Congress, mostly because of a dramatic increase in the immediate relatives who are able to immigrate without numerical limits.

The 226,000 and the 140,000 numbers for family and employment-preference green cards, respectively, was considered to be a reasonable amount for our country to absorb when they were calculated nearly 2 decades ago. But in 1990, Congress did not contemplate that we'd also have 12 to 20 million illegal immigrants straining our health care system, our law enforcement, our infrastructure, our schools and our cultural identity. We should not be seeking to accomplish a backdoor increase in immigration levels by adding green card numbers through, quote, recapturing, closed

quote, simply because the maximum number of green cards allowed was not issued in some past years.

Most Americans favor a decrease in legal immigration, not an increase, because of the pressures I have identified. And I ask those who are the proponents of this at the proper point in this process, including the Chair and all of the Committee Members, to answer into the record the questions, will you support a hard overall cap on legal immigration, a real hard number for overall and, if so, what number would you agree to and what is your vision of America in the years 2050, 2075, 2100? And whether you know it or not, you're shaping that America irrevocably with the policy that is coming through this Congress today.

From 1992 through 2007, 14,476,668 green cards have been issued. During that same 16-year period, the number of green cards issued for the family in the employment preference categories was only somewhere between—I say somewhere between—224,000 and 507,000 green cards, that much short of the statutorily set maximum depending on the methodology used, a number that pales in comparison to the overall level of legal immigration. So these numbers work out to be this, that of these available green cards we are utilizing somewhere between 96½ percent and 98½ percent of the overall cards. I think that is running it pretty close to the line, and I wouldn't expect it would be 100 percent. You could not be so precise in your work.

If any recapturing plan is considered, it should include offsetting measures that would keep the total levels of numerically limited green card categories no higher than the current level, an increase in percentage of green cards that are awarded based on what the recipient offers our country, meaning merit based. Of much greater concern to me is the existence of an extremely large backlog in the applications for green cards. The net backlog for family-based green cards now stands at 88,168 and the net backlog for employment-based green cards is 99,105. Many applicants will wait years before their applications are adjudicated. In the meantime—this is what really concerns me—green card applicants are being issued employment-authorized documents, EADs, which grant them almost all the privileges that are accorded to lawful permanent residents. They are given a right to work and the right to travel to and from the United States. They can also get Federal and State identification which allows them to procure credit, purchase property, and enjoy other privileges and access accorded to those who have legal status.

Tens of thousands of these applicants will ultimately be found ineligible for a green card. Some are aware of their ineligibility, but they apply anyway. They are counting on the long backlog to enjoy the years of legitimized presence in the United States that they've been accorded by the issuance of the EAD, a document that was, quote, earned simply by filing a green card application that has no merit.

This situation compromises our national security. Progress has been made in recent years to reduce the backlog of green card applications, to reduce processing times and to issue the number of green cards authorized by the statute. However, those gains appear to have been defeated by the surge of applications filed in fiscal

year 2007, especially for the nearly 2.5 million applications that were filed in July and August alone, the surge as I mentioned earlier.

The flood of green card applications last summer resulted from a perfect storm. An apparent disconnect between the USCIS and the State Department prompted an announcement that employment-based green cards were suddenly available to thousands who had expected to be waiting for years. Many applicants raced to beat the July 1st fee increases, thousands more who had hoped to benefit from a general amnesty as part of the comprehensive amnesty proposal realized after its defeat in the Senate that they needed to find another way if they are to legitimize their legal status.

I point out that not only do we not know how many illegals are coming into America each year, it is imprecise as to how we fit these categories, how we fill them and how many have actually been accumulated over the last 16, thus the range of a quarter million to a half a million. We are, however, utilizing the vast majority of visas under current law.

I look forward to the testimony, and I appreciate this situation being addressed in this hearing, Madam Chair, and I yield back.

Ms. LOFGREN. Thank you. The gentleman yields back. In the interest of proceeding to our witnesses and mindful of the schedule, other Members are asked to submit their written statements for the record within 5 legislative days. And without objection, all opening statements will be placed into the record. And without objection, the Chair is authorized to declare a recess of the hearing at any time.

Today we will hear from our witnesses from USCIS and the Department of State to help us consider the important issues before us.

First, it is my pleasure to introduce Michael Aytes. In 2006, Mr. Aytes was appointed the Associate Director for Domestic Operations for USCIS. Since April of 2008, he has been serving as Acting Deputy Director of USCIS. He began his career in the 1970's as a Federal employee where he served as an immigration inspector for the INS.

Next, I would like to introduce Donald Neufeld. In 2007, Mr. Neufeld became the Deputy Associate Director for the Office of Domestic Operations at USCIS. He is currently serving as the Acting Associate Director for our Domestic Operations. He began his career with the Immigration and Naturalization Service in 1983.

I'm also pleased to welcome Stephen A. "Tony" Edson. Mr. Edson joined the United States Foreign Service in 1981. He is currently serving as Deputy Assistant Secretary of State for Visa Services in the U.S. State Department's Bureau of Consular Affairs. Prior to that he served as Managing Director of Visa Services and Senior Advisor FOR Strategic Problems for the Visa Services Directorate from 2001 to 2005. He graduated from the University of Kansas with a Bachelor's in East Asian language and culture in 1980, and he holds a Master's in Management from the Sasin Graduate Institute of Business Administration at Chula—I can't pronounce—Chulalongkorn University in Bangkok. I'm sure he could pronounce it better than I, and a Master's in Science Degree from the Na-

tional Security Strategy from the National War College in Fort McNair, Washington, D.C.

And finally, we welcome Charles Oppenheim. Mr. Oppenheim joined the Department of State in 1978 and has worked as a consular officer in the Bureau of Consular Affairs since 1979. In 1998, he was appointed to the position of Chief of the Immigrant Visa Control and Reporting Division in the Office of Field Support and Liaison. He is the State Department's expert in visa database management and statistical reporting on visa-related information. He is a native of Virginia and a graduate of the University of Richmond.

Now, your written statements will be made part of the record in their entirety, and we would ask that you summarize your testimony in about 5 minutes. When there is a minute left, the yellow light will go on to give you a little warning of that. It is my understanding Mr. Aytes will testify on behalf of USCIS and Mr. Edson will testify on behalf of the State Department, but that all four of the witnesses will be available to answer Members' questions. And I see that the witnesses are nodding. So, Mr. Aytes, if you could begin, that would be terrific.

TESTIMONY OF MICHAEL AYTES, ACTING DEPUTY DIRECTOR, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES; ACCOMPANIED BY DONALD NEUFELD, ACTING ASSOCIATE DIRECTOR, DOMESTIC OPERATIONS, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES

Mr. AYTES. Thank you, Chairwoman Lofgren.

Ms. LOFGREN. If you could turn the microphone on.

Mr. AYTES. I thought it was on. Excuse me.

Ms. LOFGREN. Much better. Thank you.

Mr. AYTES. I apologize.

Thank you for the opportunity to discuss the role of U.S. citizenship and immigration services in processing visas and our ongoing cooperative efforts with the Department of State. The Department of State actually administers the visa allocation program. Our role focuses on processing petitions for preference classification, the front end of the process, and applications by persons already in the United States to become permanent residents, referred to as adjustment of status.

In recent years, as you have alluded to, more than 1 million people have annually become permanent residents in the United States, either by being issued an immigrant visa overseas by the State Department or granted adjustment of status by USCIS or the Executive Office for Immigration Review. State and USCIS must work closely in this respect because both organizations draw from the same pool of limited numbers. Close and careful coordination ensures that annual limitations are not exceeded and also helps us jointly strive to use all available visa numbers to meet demand.

Last year, in fiscal year 2007, more than 1,052,000 people became permanent residents. Fifty-nine percent were already in the United States on adjusted status.

In concert with State, USCIS has made significant changes in recent years to maximize use of the limited numbers of visas available annually. This includes using the recapture provisions that already exist by law. Changes we have made include increased staff-

ing, enhanced analytic capacity, more detailed and strategic management of our production in close partnership with State to share greater information. This enhanced information exchange with State in particular helps us manage and they manage the visa allocation process and allows us to improve our target production to meet the needs for visa allocation.

By statute, an application for adjustment of status can only be filed if an immigrant visa is immediately available to the applicant. USCIS regulations define that to be if the priority date of the underlying petition is earlier than the cut-off date on the State Department monthly visa bulletin.

Because of these requirements, USCIS is unable to accept an application and begin the adjudication process in advance of visa availability the way the State accepts applications for an immigrant visa. We are also unable as a result to limit the number of applications accepted in a given month to the actual number of visas available. Rather, as many as qualified can file for adjustment of status during the window provided by the visa bulletin. This can lead to more applications than visas available, resulting in applicants being provided interim benefits such as work authorization and permission to travel until a visa number is available.

Last July was a witness of that scenario. In some cases where visas are unavailable to each individual application accepted, the wait for some adjustment of status in the employment categories will be measured in years. Over the past few years, USCIS has built up an inventory of applications for some visa categories that cannot be adjudicated because the number of filings exceed the number of visas actually available. It has also admittedly built up a backlog of applications for some visa categories where competing adjudication priorities have prevented timely completion of cases.

USCIS has a fee structure now and surge response plan that is financing the capacity enhancements necessary to eliminate the current adjustment of status backlog and to sustain a higher capacity for timely adjudications going forward.

To maximize visa number usage while working office backlog, USCIS has adopted a production strategy that focuses on completing cases where visas are immediately available.

Pre-adjudication includes completing all required background checks and resolving all eligibility problems except for visa availability. This allows immediate approval and visa number allocation as visas become available.

USCIS works closely with State and more closely than ever to exchange information critical for their managing the visa allocation process. We are in weekly contact and share forecast and production information. We are also working together on a plan to forward all approved family-based visa petitions to the State Department to enhance their ability to accurately forecast demand for numbers.

Though we still have challenges to overcome, USCIS is currently showing improvements as a result of our process changes. For example, as of April 25, 2008, USCIS has adjudicated over 65 percent of its fiscal year 2008 target for employment-based visas. With 5 months to go in the fiscal year, this is a strong start. We plan to

continue implementing process improvements and new reporting mechanisms to manage these important applications.

I look forward to updating you on our continued progress and am pleased to answer any questions you may have.

[The prepared statement of Mr. Aytes follows:]

PREPARED STATEMENT OF MICHAEL AYTES

TESTIMONY

OF

MICHAEL AYTES
ACTING DEPUTY DIRECTOR
U.S. CITIZENSHIP AND IMMIGRATION SERVICES

FOR A HEARING

BEFORE
THE HOUSE JUDICIARY COMMITTEE
SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW

APRIL 30, 2008
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Introduction

Chairwoman Lofgren, Ranking Member King, Members of the Subcommittee, thank you for the opportunity to appear before you today to discuss the role of U.S. Citizenship and Immigration Services (USCIS) in the visa process, particularly USCIS and Department of State (DOS) efforts to maximize visa issuance in accordance with the law. I am accompanied today by Don Neufeld, Acting Associate Director for Domestic Operations.

In recent years, over 1 million people became Lawful Permanent Residents of the United States (LPRs). Under the law there are a variety of different categories and means through which a person may become eligible for permanent residence. A substantial number of these categories have numerical limitations – annual caps on how many people can immigrate. There are other aspects to these caps as well, such as limitations per country.

While there are many different categories and means by which a person may become a permanent resident, there are two ways a person is actually granted permanent residence. The first is by being issued an immigrant visa overseas from DOS, and then being admitted to the United States with that visa. The second is by being granted Adjustment of Status by USCIS or the Executive Office of Immigration Review (EOIR).[1] The adjustment option is limited to people already in the United States when they become eligible for an immigrant visa or otherwise become eligible for adjustment of status.

The Department of State administers the provisions of the Immigration and Nationality Act (INA) that relate to the numerical limits on immigrant visa issuance. However, DOS and USCIS must work closely in this respect because visas issued by DOS and adjustment of status granted by USCIS draw down from the same pool of limited numbers. Close and careful coordination ensures that annual limitations are not exceeded, and also helps us jointly strive to use all available visa numbers when there is sufficient demand.

According to the Office of Immigration Statistics March 2008 Annual Flow Report, a total of 1,052,415 persons became LPRs in 2007. The majority of the new permanent residents (59 percent) were already living in the United States when they adjusted status to permanent residence. Two-thirds of all new LPRs were granted permanent residence based on a qualifying family relationship with a U.S. citizen or LPR. The leading countries of birth for new permanent residents were Mexico (14 percent), China (7 percent), and the Philippines (7 percent).

In concert with DOS, USCIS has made significant changes in recent years to maximize the use of the limited number of visas available annually. These changes include increased staffing, enhanced analytical capacity, more detailed and strategic management of monthly production, and close partnership with DOS to share greater information. This enhanced information exchange assists DOS in better managing visa allocations through the monthly visa bulletin and improves USCIS' ability to target production for maximum result.

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[1] According to the Office of Immigration Statistics Annual Flow Report March 2008, for the last three years the number of persons granted permanent residence were 1,052,415 in 2007; 1,266,129 in 2006, and 1,122,257 in 2005.

Background

A Lawful Permanent Resident is an individual who has been granted permanent resident status in the United States. These residents are given Permanent Resident Cards, commonly called "green cards", and may live and work permanently anywhere in the United States. They may own property, attend schools, join the U.S. military, and apply to become U.S. citizens.

There are five general categories of persons able to immigrate to the United States. They are Immediate Relatives of a U.S. citizen, Family-sponsored immigrants, Employment-based immigrants, Diversity immigrants and those granted permanent residence after holding refugee or asylum status in the United States. Congress has established annual limits on the number of aliens who can become LPRs through the family sponsored, employment-based and diversity categories.

The family-sponsored category consists of four preferences -

- Unmarried sons and daughters of U.S. citizens and their children;
- Spouses, children, and unmarried sons and daughters of permanent residents and their children;
- Married sons and daughters of U.S. citizens and their spouses and children; and
- Brothers and sisters of US citizens aged 21 and over, and their spouses and children.

A U.S. citizen or LPR seeking to sponsor an alien on the basis of their family relationship will file a visa petition (Form I-130) with USCIS. Section 201 of the Immigration and Nationality Act (INA) sets a minimum annual family-sponsored preference limit of 226,000. In recent years, because of the large number of Immediate Relatives, the family-sponsored preference limit has remained at this statutory floor.

Employment-based petitions are filed by U.S. companies, organizations and individuals in order to employee foreign workers in accordance with the INA. These workers may be nonimmigrants within the United States or people in other countries willing to immigrate for employment. A prospective employer will file an employment-based visa petition (Form I-140) with USCIS to sponsor the alien as an immigrant worker. The annual limit for employment-based visas is 140,000 plus any family-based preference visas that went unused in the prior fiscal year. In some recent years, such as 2005-07, the number of employment-based visas authorized and issued has been substantially higher than 140,000 because of the effect of "recapture" statutes. These visas may be issued to the immigrant worker and his or her spouse and children that are not already U.S. citizens or LPRs.

Once USCIS is satisfied that the qualifying relationship exists and the I-130 or I-140 is approved, an individual may apply for a visa with DOS overseas or may apply to adjust status in the United States with USCIS or EOIR <u>if a visa is immediately available</u>.

The following table indicates approvals for all adjustment of status applications over the past few years.

Fiscal Year	Adjustment of Status Approvals	Percent of All Admissions
2005	738,302	65.8%
2006	819,248	64.7%
2007	621,047	59.0%
2008 to date	340,432	not known

USCIS Operations

By statute, an application for adjustment of status can only be filed if an immigrant visa is immediately available to the applicant. USCIS regulations define a visa to be immediately available if the priority date of the underlying visa petition is earlier than the cut-off date indicated for the appropriate visa category on the current DOS monthly visa bulletin. Because of these requirements, USCIS is unable to accept an application and begin the adjudication process in advance of visa availability. It is also unable to limit the number of applications accepted in a given month to the actual number of visas available. Rather, as many as qualify can file for adjustment of status during the window indicated on the visa bulletin. This can lead to a far greater number of applications than visas available. In such cases, USCIS adjudicates the application and grants interim benefits, such as work authorization and permission to travel (advance parole), until a visa number is available. Currently, the wait for some adjustment of status applicants in the employment categories can be measured in years.

Over the past few years, USCIS has built up an inventory of applications for some visa categories that cannot now be adjudicated because the number of filings exceeded the number of visas that were actually available. It also has built up a backlog of applications for some visa categories where competing adjudication priorities have prevented the timely completion of cases, even though visas are immediately available.

According to DOS, applicants for adjustment of status currently account for 25% of annual family-based visa allocations and 85% of annual employment-based visa allocations. This has varied from year to year as different factors have influenced USCIS production. For instance, the largest gaps in recent visa number usage occurred in Fiscal Year (FY) 2002 and 2003, which coincided with a significant drop in adjustment of status processing as USCIS adapted to changes to increase security screening post 9/11. Production rose in FY 2006 due to the culmination of backlog elimination efforts and the infusion of appropriated funds. While production slowed in FY 07 after completing the prior backlog reduction effort and subsequent temporary staffing reductions, production is up substantially in FY 2008. For the first half of FY 2008, increased productivity through operational and staffing enhancements has resulted in increased visa usage of 16.6% over the same period last year.

USCIS has a fee structure and surge response plan that is financing the capacity enhancements needed to both eliminate the current adjustment of status backlog and to sustain a higher capacity for timely adjudications going forward.

To maximize visa number usage while working off its backlog, USCIS has adopted a production strategy that focuses on completing cases where visas are immediately available and on working cases to the point just short of approval (pre-adjudication) where visas will be available in the coming months. Pre-adjudication includes completing all required background checks and resolving all eligibility issues except for visa availability. This allows for immediate approval and visa number allocation as visas become available for pre-adjudicated cases.

Collaboration with DOS

USCIS works with DOS more closely than ever to exchange information that is critical for managing visa allocation and for targeting future production efforts. We are now in weekly contact with the Chief of DOS's Visa Unit to communicate current inventories per country and preference class to better determine each month's visa bulletin. DOS provides regular updates to USCIS on past visa number usage and remaining numeric allocations per country and preference class. DOS also shares its forecast for priority date movement in upcoming visa bulletins so that USCIS can adjust production in advance for maximum visa number usage.

USCIS and DOS are also working together on a plan to forward all approved family-based visa petitions to DOS, including those where the petitioner indicates the beneficiary will apply for adjustment of status in the United States. This will enhance the ability of DOS to accurately forecast demand for visa numbers and more precisely manage the establishment of priority dates to meter the intake of applications for adjustment of status to match visa availability.

Conclusion

Though we still have challenges to overcome, USCIS is currently showing improvements as a result of process improvements. As of April 25, 2008, USCIS had adjudicated over 65 percent of its FY 2008 target for employment-based visas. With five months to go in FY 2008, this is a strong start. We plan to continue implementing process improvements and new reporting mechanisms for managing these important applications.

Over the years, USCIS and DOS have strived to work in concert with respect to the Visa Bulletin process. After the events of the Summer of 2007, this year, we have built on that foundation and are better equipped to accurately assess and effectively manage the process to ensure that all available visa numbers are utilized. With five months left in FY 2008 year, we are confident this partnership between USCIS and DOS will provide the blueprint for continued success in managing visa allocations.

I look forward to updating you on our continued progress and am pleased to answer any questions that you may have at this time.

Ms. LOFGREN. Thank you. Now I'd be pleased to hear from you, Mr. Edson.

TESTIMONY OF STEPHEN A. EDSON, DEPUTY ASSISTANT SECRETARY OF STATE FOR VISA SERVICE, UNITED STATES DEPARTMENT OF STATE; ACCOMPANIED BY CHARLES OPPENHEIM, CHIEF, VISA CONTROL AND REPORTING DIVISION, UNITED STATES DEPARTMENT OF STATE

Mr. EDSON. Thank you, Chairwoman Lofgren, Ranking Member King and distinguished Members of the Committee. It is a pleasure to be here this afternoon to provide an overview of the Department's role in managing and adjudicating immigrant visas whose numbers are limited by law. Let me first give you a broad view of processing and steps the Department has undertaken, and then I'll focus on the specifics of the number allocation process for immigrant visas as managed by our Immigrant Visa Control and Reporting Division.

The Bureau of Consular Affairs has made dramatic improvements to the visa process since 9/11 and continuously evaluates that process to identify new ways to enhance security and increase efficiency. We've mandated the use of an electronic visa application form for nonimmigrant visas. We are beginning work on the immigrant visa version of the form and we have transitioned to full electronic connectivity with our department security clearance agencies. We fully transitioned from 2 to 10 fingerprints to ensure consistent screening of foreign nationals entering the United States.

These enhancements have allowed us to improve service and security despite dramatic annual increases in the volume of visa applications. Our transaction to electronic processing also involves more effective use of backroom domestic operations at our National Visa Center in New Hampshire, where we manage cases, collect documents and fees from sponsors, perform initial fraud checks and schedule appointments for a growing number of posts.

These strategies give consular officers overseas the ability to focus specifically on the task of visa adjudication that must be done abroad and permit them to make better decisions with the best possible information developed for them in advance so that interviews can be focused and targeted.

The Department of State is responsible for the allocation of numerically limited immigrant visa numbers under the authority granted by Section 203 of the Immigration and Naturalization Act. These visa numbers are allocated based on congressionally mandated preferences that decide overall total limits for each category and per country limits within each category.

The Immigrant Visa Control and Reporting Division's main responsibility is the administration of this complex series of annual numerical limitations. Our goal is to have the issuance level come as close as possible to 100 percent of the numbers available each year without exceeding those limits. We also want to maintain a steady flow of applications throughout the year to ensure appropriate use of government resources and to provide good customer service to the applicants.

Over the past 3 years, we have a proven record of using over 95 percent of the annual worldwide numerical limit. The Department

works closely with United States Citizenship and Immigration Service on data exchange to allow for maximum use of numbers under those annual limits and in a stable, predictable manner. This is extremely important for the employment-based categories where CIS currently uses approximately 90 percent of all available visa numbers. Section 203(g) of the INA directs the Secretary of State to make reasonable estimates of the anticipated number use in order to maximize numbers under those limits. When making such estimates, it is necessary to take into consideration the number of variables based on the best information which is available to us. Should there be a change which could not be anticipated, it can have an impact on number use obviously. This makes the determination of the monthly cut-off date particularly difficult at the end of the fiscal year since there is little, if any, time to make adjustments to stay under the 100 percent. While we always strive to reach that 100 percent, increasing our percentage above 95 percent is difficult as we are statutorily barred from exceeding the annual limits.

On a given day, immigrant visas are issued in about 130 embassies and consulates abroad. Adjustments of status, which use the same numbers, are granted at about 90 to 100 domestic USCIS facilities. The Department of State tracks that daily number usage and requests from our consular sections abroad and from USCIS. On a monthly basis the Visa Office determines the number of visas that can be allocated for each visa category to each country on that worldwide basis. As stated previously, our goal is to come as close as possible without exceeding it, and we strive to increase cooperation with CIS to make our record even better.

Again, I thank you for the opportunity to testify and am happy to take your questions.

[The prepared statement of Mr. Edson follows:]

PREPARED STATEMENT OF STEPHEN A. "TONY" EDSON

US House of Representatives
Committee on the Judiciary
Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law

Testimony of Stephen A. "Tony" Edson
Deputy Assistant Secretary of State for Visa Services
Bureau of Consular Affairs
U.S. Department of State

April 30, 2008
2:00 p.m.
2141 Rayburn House Office Building

Chairman Lofgren, Ranking Member King and distinguished members of the Committee, it is a pleasure to be here this afternoon to provide an overview of the Department's role in managing and issuing immigrant visas whose numbers are limited by law. Let me first give you a broad view of visa processing and steps that the Department has undertaken, and then I will focus on the specifics of the number allocation process for immigrant visas that is managed through our Immigrant Visa Control and Reporting Division.

The Bureau of Consular Affairs has made dramatic improvements to the visa process since 9/11 and continuously evaluates the process to identify new ways to enhance security and increase efficiency. We have mandated the use of an electronic visa application form (EVAF) and transitioned to full electronic connectivity with partner security clearance agencies. These enhancements have allowed us to improve service and security despite dramatic annual increases in the volume of visa applications. We have fully transitioned from two to ten fingerprints to ensure consistent screening of foreign nationals entering the United States.

Our transition to electronic processing also involves more effective use of "backroom" domestic operations at the National Visa Center where we manage cases, collect documents and fees from sponsors, perform initial fraud checks, and schedule appointments for a growing number of posts. These strategies

give consular officers overseas the ability to focus specifically on the task of visa adjudication that must be done abroad and permit them to make better decisions with the best possible information developed for them in advance so that interviews can be focused and targeted.

Now let me discuss immigrant visa processing more specifically. The State Department is responsible for the allocation of numerically limited immigrant visa numbers under the authority granted by section 203 of the Immigration and Nationality Act (INA). These visa numbers are allocated based on congressionally mandated preferences that assign an overall total, limits for each category and per country limits within each category.

The Immigrant Visa Control and Reporting Division's main responsibility is the administration of the complex series of annual numerical limitations on immigrant visas, subdivided by preference category and country, which are set by the INA. Where demand exists, our goal is to have the issuance level come as close as possible to 100% of the numbers available each year without exceeding the limits that Congress has established. We also want to maintain a steady flow of applications throughout the year to ensure appropriate use of government resources and to provide good customer service to applicants. Over the past three years, we have a proven record of using over 95 percent of the annual worldwide numerical limit.

The Department works closely with United States Citizenship and Immigration Service (USCIS) on data exchange to allow for maximum use of numbers under the annual limits, and in a stable, predictable manner. This is extremely important in the Employment based categories, where USCIS currently uses approximately 90 percent of all available visa numbers. Section 203(g) of the INA directs the Secretary of State to make reasonable estimates of anticipated number use in order to maximize number use under annual limits. When making such estimates it is necessary to take into consideration a number of variables based on the best information which is available when those estimates are being made. Should there be a change which could not be anticipated it can have an impact on number use. This makes the determination of the monthly cut-off date particularly difficult at the end of the fiscal year since there is little if any time to make any necessary adjustments. While we will always strive to reach our 100% goal of the numbers allocated, increasing our percentage above 95 percent is difficult given that we are statutorily barred from exceeding the annual limits.

On any given day, immigrant visas are issued at about 130 embassies and consulates overseas. Adjustments of status (which use the same numbers) are granted at about 90 - 100 domestic USCIS offices. The State Department tracks visa number usage and requests from our consular sections around the world and USCIS. On a monthly basis the Visa Office determines the number of visas which can be allocated in each visa category and to each country on a worldwide basis. The process developed for managing the numbers throughout the year requires that numbers are made available by adjusting the cutoff date for each category and each country on a monthly basis. Cutoff dates for all countries except China, India, Mexico and the Philippines are currently the same every month in every category. Because demand for numbers exceeds annual per-country numerical limits for these four countries, they have their own cutoff dates in some categories.

The monthly visa bulletin published by the Department and available on our website at www.Travel.State.Gov explains the allocation of visa numbers by dates, the laws and the per country and per category limits.

As I stated previously, our goal is to come as close as possible to the annual limit without exceeding it. The Immigrant Visa Control and Reporting Division maintains a database containing workload statistics for immigrant visas issued at Foreign Service posts worldwide, and adjustment of status cases at USCIS. We authorize numbers for USCIS applications as USCIS request them, usually on a daily basis.

I want to address a recent issue that highlights our ability to manage numbers and make quick adjustments that work to ensure the highest number usage possible for the year. Since the publication of the April 2008 Visa Bulletin we have received several inquiries about the allocation of Employment-Based Second Preference visa numbers to India and China. I want to make clear that India is not receiving all of the extra numbers. They are also available to China where the applicant's priority date was earlier than the posted cut-off date and are also available to applicants in any other country with a current priority date and for which the interview is completed and all required clearances received. These numbers are being made available because current indications are that demand from "all other countries" will not be sufficient to utilize all available Employment Second preference numbers. Such numbers will be made available, as visa numbers are always provided, in priority date order (the date petition to accord immigrant status was filed with USCIS). India does have a larger number of

older petitions pending and therefore is likely to receive a larger number of these visa numbers than China. The Department's policy of making the extra numbers available in priority date order is mandated by Section 203(e) of the INA. This allocation of numbers based on priority date means that China and India Second preference applicants will be subject to exactly the same cut-off date.

I also want to take this opportunity to review the procedures that the Department undertakes throughout the year, in light of last summer's extraordinary events connected with the issuance of the Visa Bulletin in July. The situation last summer did not disadvantage any applicants but when we discussed the subject of visa allocation last summer, I committed to you that we would make every effort to avoid a repeat of the confusion applicants experienced in July. Working closely with our USCIS partners we have improved our ability to monitor usage to avoid further problems. Our goal is to ensure that immigrants are processed in a transparent and orderly manner.

I ask that a fact sheet which I hope explains more thoroughly the work carried out in the Immigrant Visa Control and Reporting Division by its very fine staff and the May Visa Bulletin be included in the record. The Visa Bulletin is intended to provide information regarding visa availability during that specific month for applicants who have already applied for procession with the Department of State or USCIS. It is not intended to govern the filing of petitions for future processing by the Department or USCIS, nor does it guarantee the availability of visa numbers to those filing based on the newly announced cut-off date. Again, I thank you for the opportunity to testify and I am happy to take your questions.

VISA NUMBER AVAILABILITY FACT SHEET.

The Department of State is responsible for administering the provisions of the Immigration and Nationality Act (INA) relating to the numerical limitations on immigrant visa issuances. It is a process that has evolved through the years and will continue to do so as we use the best technologies to improve communication with posts, applicants and our colleagues at USCIS.

At the beginning of each month, the Visa Office (VO) receives a report from each consular post listing totals of documentarily qualified immigrant visa applicants in categories subject to numerical limitation. Cases are grouped in three different categories: 1) foreign state chargeability, 2) preference and 3) priority date.

Foreign state chargeability for visa purposes refers to the fact that an immigrant is chargeable to the numerical limitation for the foreign state or dependent area in which the immigrant's place of birth is located. Exceptions are provided for a child (unmarried and under 21 years of age) or spouse accompanying or following to join a principal to prevent the separation of family members or in a foreign state of which neither parent was a native or resident. Alternate chargeability is desirable when the visa cut-off date for the foreign state of a parent or spouse is more advantageous than that of the applicant's foreign state.

Preference is the visa category that can be assigned as established by the Immigration and Nationality Act based on relationships to U.S. citizens or legal permanent residents. Family based immigration falls under two basic categories: unlimited and limited. Preferences established by law for the limited category are:

Family First Preference (F1):

Unmarried sons and daughters of U.S. citizens and their minor children, if any.

Family Second Preference (F2): Spouses, minor children and unmarried sons and daughters of lawful permanent residents.

Family Third Preference (F3): Married sons and daughters of U.S. citizens and their spouses and minor children.

Family Fourth Preference (F4): Brothers and sisters of United States citizens and their spouses and minor children provided the U.S. citizen is at least 21 years of age.

Employment-based immigration also includes preferences; all of them are subject to a limitation.

The Priority Date is normally the date on which the petition to accord the applicant immigrant status was filed, normally with U.S. Citizenship and Immigration Service.

The Department of State Visa Office subdivides the annual preference and foreign state limitations specified by the INA into monthly allotments. The totals of documentarily qualified applicants which have been reported to VO are compared each month with the numbers available for the next regular allotment. The determination of how many numbers are available requires consideration of several of variables, including: past number use; estimates of future number use and return rates; and estimates of Citizenship and Immigration Service demand based on cut-off date movements. Once this is done, the cut-off dates are established and numbers are allocated to reported applicants in order of their priority dates, the oldest dates first.

If there are sufficient numbers in a particular category to satisfy all reported documentarily qualified demand, the category is considered "Current". For example: If the monthly allocation target is 10,000 and we only have 5,000 applicants the category can be "Current".

Whenever the total of documentarily qualified applicants in a category exceeds the supply of numbers available for allotment for the particular month, the category is considered to be "oversubscribed" and a visa availability cut-off date is established. The cut-off date is the priority date of the first documentarily qualified applicant who could not be accommodated for a visa number. For example, if the monthly target is 10,000 and we have 25,000 applicants, then the goal would be to establish a cut-off date so that only 10,000 numbers would be allocated. In this case, the cut-off in the ideal world would be the priority date of the 10,001st applicant.

Only persons with a priority date earlier than a cut-off date are entitled to allotment of a visa number. Possible cut-off dates are the 1st, 8th, 15th, and

22nd of any given month, since the Visa Office groups demand for numbers under these dates. (Priority dates of the first through seventh of a month are grouped under the 1st, the eighth through the fourteenth under the 8th, etc.)

The Visa Office attempts to establish the cut-off dates for the following month on or about the 8th of each month. The dates are immediately transmitted to consular posts abroad and the U.S. Citizenship and Immigration Services (USCIS), and also published in the Visa Bulletin and online at the Bureau of Consular Affairs Web site (www.travel.state.gov). Visa allotments for use during that month are transmitted to consular posts. USCIS requests visa allotments for adjustment of status cases only when all other case processing has been completed.

BACKGROUND INFORMATION ON THE SYSTEM AND CLARIFICATION OF SOME FREQUENTLY MISUNDERSTOOD POINTS:

Applicants entitled to immigrant status become "documentarily qualified" to apply for an immigrant visa (meaning they have all their documents necessary for a visa interview and, if approved, for issuance) at their own initiative and convenience. By no means has every applicant with a priority date earlier than a prevailing cut-off date been processed for final visa action. On the contrary, visa allotments are made only on the basis of the total applicants reported documentarily qualified each month. Demand for visa numbers can fluctuate from one month to another, with the inevitable impact on cut-off dates.

If an applicant is reported documentarily qualified but allocation of a visa number is not possible because of a visa availability cut-off date, the demand is recorded at the Visa Office and an allocation is made as soon as the applicable cut-off date advances beyond the applicant's priority date. There is no need for such applicant to be reported a second time.

Visa numbers are always allotted for all documentarily qualified applicants with a priority date before the relevant cut-off date, as long as the case had been reported to the Visa Office in time to be included in the monthly calculation of visa availability. Failure of visa number receipt by the overseas processing office could mean that the request was not dispatched in time to reach the Visa Office for the monthly allocation cycle, or that information on the request was incomplete or inaccurate (e.g., incorrect priority date).

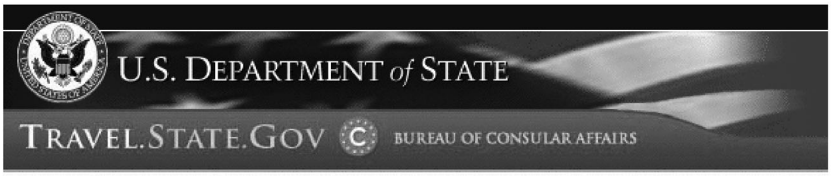
Allocations to Foreign Service posts outside the regular monthly cycle are possible in emergency or exceptional cases, but only at the request of the office processing the case. Note that should retrogression of a cut-off date be announced, the Visa Office can honor extraordinary requests for additional numbers only if the applicant's priority date is earlier than the retrogressed cut-off date.

Not all numbers allocated are actually used for visa issuance; some are returned to VO and are reincorporated into the pool of numbers available for later allocation during the fiscal year. The rate of return of unused numbers may fluctuate from month to month, just as demand may fluctuate. Lower

returns mean fewer numbers available for subsequent reallocation. Fluctuations can cause cut-off date movement to slow, stop, or even retrogress. Retrogression is particularly possible near the end of the fiscal year as visa issuance approaches the annual limitations.

Per-country limit: The annual per-country limitation of 7% is a cap, which visa issuances to any single country may not exceed. Applicants compete for visas primarily on a worldwide basis. The country limitation serves to avoid monopolization of virtually all the annual limitation by applicants from only a few countries. This limitation is not a quota to which any particular country is entitled, however. A portion of the numbers provided to the Family Second preference category is exempt from this per-country cap. The American Competitiveness in the Twenty-First Century Act (AC21) removed the per-country limit in any calendar quarter in which overall applicant demand for Employment-based visa numbers is less than the total of such numbers available.

Applicability of Section 202(e): When visa demand by documentarily qualified applicants from a particular country exceeds the amount of numbers available under the annual numerical limitation, that country is considered to be oversubscribed. Oversubscription may require the establishment of a cut-off date which is earlier than that which applies to a particular visa category on a worldwide basis. The prorating of numbers for an oversubscribed country follows the same percentages specified for the division of the worldwide annual limitation among the preferences. (Note that visa availability cut-off dates for oversubscribed areas may not be later than worldwide cut-off dates, if any, for the respective preferences.)



Visa Bulletin

Number 118
Volume VIII
Washington, D.C.

VISA BULLETIN FOR MAY 2008

A. STATUTORY NUMBERS

1. This bulletin summarizes the availability of immigrant numbers during May. Consular officers are required to report to the Department of State documentarily qualified applicants for numerically limited visas; the Bureau of Citizenship and Immigration Services in the Department of Homeland Security reports applicants for adjustment of status. Allocations were made, to the extent possible under the numerical limitations, for the demand received by April 8th in the chronological order of the reported priority dates. If the demand could not be satisfied within the statutory or regulatory limits, the category or foreign state in which demand was excessive was deemed oversubscribed. The cut-off date for an oversubscribed category is the priority date of the first applicant who could not be reached within the numerical limits. Only applicants who have a priority date earlier than the cut-off date may be allotted a number. Immediately that it becomes necessary during the monthly allocation process to retrogress a cut-off date, supplemental requests for numbers will be honored only if the priority date falls within the new cut-off date.

2. Section 201 of the Immigration and Nationality Act (INA) sets an annual minimum family-sponsored preference limit of 226,000. The worldwide level for annual employment-based preference immigrants is at least 140,000. Section 202 prescribes that the per-country limit for preference immigrants is set at 7% of the total annual family-sponsored and employment-based preference limits, i.e., 25,620. The dependent area limit is set at 2%, or 7,320.

3. Section 203 of the INA prescribes preference classes for allotment of immigrant visas as follows:

FAMILY-SPONSORED PREFERENCES

First: Unmarried Sons and Daughters of Citizens: 23,400 plus any numbers not required for fourth preference.

Second: Spouses and Children, and Unmarried Sons and Daughters of Permanent
Residents: 114,200, plus the number (if any) by which the worldwide family preference level exceeds 226,000, and any unused first preference numbers:

A. Spouses and Children: 77% of the overall second preference limitation, of which 75% are exempt from the per-country limit;

B. Unmarried Sons and Daughters (21 years of age or older): 23% of the overall second preference limitation.

Third: Married Sons and Daughters of Citizens: 23,400, plus any numbers not required by first and second preferences.

Fourth: Brothers and Sisters of Adult Citizens: 65,000, plus any numbers not required by first three preferences.

EMPLOYMENT-BASED PREFERENCES

First: Priority Workers: 28.6% of the worldwide employment-based preference level, plus any numbers not required for fourth and fifth preferences.

Second: Members of the Professions Holding Advanced Degrees or Persons of Exceptional Ability: 28.6% of the worldwide employment-based preference level, plus any numbers not required by first preference.

Third: Skilled Workers, Professionals, and Other Workers: 28.6% of the worldwide level, plus any numbers not required by first and second preferences, not more than 10,000 of which to "Other Workers".

Fourth: Certain Special Immigrants: 7.1% of the worldwide level.

Fifth: Employment Creation: 7.1% of the worldwide level, not less than 3,000 of which reserved for investors in a targeted rural or high-unemployment area, and 3,000 set aside for investors in regional centers by Sec. 610 of P.L. 102-395.

4. INA Section 203(e) provides that family-sponsored and employment-based preference visas be issued to eligible immigrants in the order in which a petition in behalf of each has been filed. Section 203(d) provides that spouses and children of preference immigrants are entitled to the same status, and the same order of consideration, if accompanying or following to join the principal. The visa prorating provisions of Section 202(e) apply to allocations for a foreign state or dependent area when visa demand exceeds the per-country limit. These provisions apply at present to the following oversubscribed chargeability areas: CHINA-mainland born, INDIA, MEXICO, and PHILIPPINES.

5. On the chart below, the listing of a date for any class indicates that the class is oversubscribed (see paragraph 1); "C" means current, i.e., numbers are available for all qualified applicants; and "U" means unavailable, i.e., no numbers

are available. (NOTE: Numbers are available only for applicants whose priority date is **earlier** than the cut-off date listed below.)

Fam-ily	All Charge-ability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPP-INES
1st	08MAR02	08MAR02	08MAR02	08JUL92	15MAR93
2A	08JUN03	08JUN03	08JUN03	01MAY02	08JUN03
2B	01JUN99	01JUN99	01JUN99	01APR92	15FEB97
3rd	08JUN00	08JUN00	08JUN00	22JUL92	01APR91
4th	08AUG97	15JAN97	01JAN97	15DEC94	08MAR86

*NOTE: For May, 2A numbers **EXEMPT from per-country limit** are available to applicants from all countries with priority dates **earlier** than 01MAY02. 2A numbers **SUBJECT to per-country limit** are available to applicants chargeable to all countries **EXCEPT MEXICO** with priority dates beginning 01MAY02 and earlier than 08JUN03. (All 2A numbers provided for MEXICO are exempt from the per-country limit; there are no 2A numbers for MEXICO subject to per-country limit.)

	All Charge-ability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIP-PINES
Employ-ment -Based					
1st	C	C	C	C	C

2nd	C	01JAN04	01JAN04	C	C
3rd	01MAR06	22MAR03	01NOV01	01JUL02	01MAR06
Other Workers	01JAN03	01JAN03	01JAN03	01JAN03	01JAN03
4th	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C
5th	C	C	C	C	C
Targeted Employ-ment Areas/ Regional Centers	C	C	C	C	C

The Department of State has available a recorded message with visa availability information which can be heard at: (area code 202) 663-1541. This recording will be updated in the middle of each month with information on cut-off dates for the following month.

Employment Third Preference Other Workers Category: Section 203(e) of the NACARA, as amended by Section 1(e) of Pub. L. 105-139, provides that once the Employment Third Preference Other Worker (EW) cut-off date has reached the priority date of the latest EW petition approved prior to November 19, 1997, the 10,000 EW numbers available for a fiscal year are to be reduced by up to 5,000 annually beginning in the following fiscal year. This reduction is to be made for as long as necessary to offset adjustments under the NACARA program. Since the EW cut-off date reached November 19, 1997 during Fiscal Year 2001, the reduction in the EW annual limit to 5,000 began in Fiscal Year 2002.

B. DIVERSITY IMMIGRANT (DV) CATEGORY

Section 203(c) of the Immigration and Nationality Act provides a maximum of up to 55,000 immigrant visas each fiscal year to permit immigration opportunities for persons from countries other than the principal sources of current immigration to the United States. The Nicaraguan and Central American Relief Act (NACARA) passed by Congress in November 1997 stipulates that beginning with DV-99, and for as long as necessary, up to 5,000 of the 55,000 annually-allocated diversity visas will be made available for use under the NACARA program. **This reduction has resulted in the DV-2008 annual limit being reduced to 50,000**. DV visas are divided among six geographic regions. No one country can receive more than seven percent of the available diversity visas in any one year.

For **May**, immigrant numbers in the DV category are available to qualified DV-2008 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off number is shown, visas are available only for applicants with DV regional lottery rank numbers **BELOW** the specified allocation cut-off number:

Region	All DV Chargeability Areas Except Those Listed Separately	
AFRICA	26,700	Except: Egypt: 20,500 Ethiopia: 16,000 Nigeria: 11,600
ASIA	10,500	
EUROPE	23,500	
NORTH AMERICA (BAHAMAS)	12	

OCEANIA	1,400	
SOUTH AMERICA, and the CARIBBEAN	1,550	

Entitlement to immigrant status in the DV category lasts only through the end of the fiscal (visa) year for which the applicant is selected in the lottery. The year of entitlement for all applicants registered for the DV-2008 program ends as of September 30, 2008. DV visas may not be issued to DV-2008 applicants after that date. Similarly, spouses and children accompanying or following to join DV-2008 principals are only entitled to derivative DV status until September 30, 2008. DV visa availability through the very end of FY-2008 cannot be taken for granted. Numbers could be exhausted prior to September 30.

C. ADVANCE NOTIFICATION OF THE DIVERSITY (DV) IMMIGRANT CATEGORY RANK CUT-OFFS WHICH WILL APPLY IN JUNE

For **June**, immigrant numbers in the DV category are available to qualified DV-2008 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off number is shown, visas are available only for applicants with DV regional lottery rank numbers **BELOW** the specified allocation cut-off number:

Region	All DV Chargeability Areas Except Those Listed Separately	
AFRICA	32,000	Except: Egypt: 22,000 Ethiopia: 17,750

		Nigeria: 13,000
ASIA	11,900	
EUROPE	26,000	
NORTH AMERICA (BAHAMAS)	12	
OCEANIA	1,500	
SOUTH AMERICA, and the CARIBBEAN	1,700	

D. MEXICO F2A VISA AVAILABILITY DURING THE COMING MONTHS

Continued heavy demand in the Mexico F2A category may require the retrogression of this cut-off date to hold number use within the annual numerical limit. Such action could occur as early as June.

E. EMPLOYMENT VISA AVAILABILITY

Many of the Employment cut-off dates have continued to advance more rapidly than might ordinarily be expected. This is a result of consultations with U.S. Citizenship and Immigration Services (USCIS) regarding their pending demand, which is currently using approximately 90% of all Employment numbers. USCIS has indicated that they would prefer to review a substantial number of cases at this time to ensure that number use in the various categories can be maximized. Should USCIS projections of the resulting number use prove to be incorrect it may be necessary to adjust the cut-off dates during the final quarter of FY-2008.

F. OBTAINING THE MONTHLY VISA BULLETIN

The Department of State's Bureau of Consular Affairs offers the monthly "Visa Bulletin" on the INTERNET'S WORLDWIDE WEB. The INTERNET Web address to access the Bulletin is:

http://travel.state.gov

From the home page, select the VISA section which contains the Visa Bulletin.

To be **placed on** the Department of State's E-mail subscription list for the "Visa Bulletin", please send an E-mail to the following E-mail address:

listserv@calist.state.gov

and in the message body type:
Subscribe Visa-Bulletin ***First name/Last name***
(example: Subscribe Visa-Bulletin Sally Doe)

To be **removed from** the Department of State's E-mail subscription list for the "Visa Bulletin", send an e-mail message to the following E-mail address:

listserv@calist.state.gov

and in the message body type: **Signoff Visa-Bulletin**

The Department of State also has available a recorded message with visa cut-off dates which can be heard at: (area code 202) 663-1541. The recording is normally updated by the middle of each month with information on cut-off dates for the following month.

Readers may submit questions regarding Visa Bulletin related items by E-mail at the following address:

VISABULLETIN@STATE.GOV

(This address cannot be used to subscribe to the Visa Bulletin.)

Department of State Publication 9514
CA/VO:April 8, 2008

Ms. LOFGREN. Thank you very much. And we will have some questions, I'm sure. I will begin. Let me start with USCIS, because—I will start with this premise and it really is the basis for the bill introduced by myself and Congressman Sensenbrenner, which is that the Congress enacted the immigration laws and we put a number in there. And the expectation is that those are the numbers that we—in law that we would allocate and yet we have not.

[The bill, H.R. 5882, follows:]

I

110TH CONGRESS
2D SESSION

H. R. 5882

To recapture employment-based immigrant visas lost to bureaucratic delays and to prevent losses of family- and employment-based immigrant visas in the future.

IN THE HOUSE OF REPRESENTATIVES

APRIL 23, 2008

Ms. ZOE LOFGREN of California (for herself and Mr. SENSENBRENNER) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To recapture employment-based immigrant visas lost to bureaucratic delays and to prevent losses of family- and employment-based immigrant visas in the future.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. RECAPTURE OF IMMIGRANT VISAS LOST TO**
4 **BUREAUCRATIC DELAY.**

5 (a) WORLDWIDE LEVEL OF EMPLOYMENT-BASED
6 IMMIGRANTS.—Section 201(d) of the Immigration and
7 Nationality Act (8 U.S.C. 1151(d)) is amended to read
8 as follows:

"(d) WORLDWIDE LEVEL OF EMPLOYMENT-BASED IMMIGRANTS .—

"(1) IN GENERAL.—The worldwide level of employment-based immigrants under this subsection for a fiscal year is equal to the sum of—

"(A) 140,000;

"(B) the number computed under paragraph (2); and

"(C) the number computed under paragraph (3).

"(2) UNUSED VISA NUMBERS FROM PREVIOUS FISCAL YEAR.—The number computed under this paragraph for a fiscal year is the difference, if any, between—

"(A) the worldwide level established under paragraph (1) for the previous fiscal year; and

"(B) the number of visas actually issued under section 203(b), subject to this subsection, during the previous fiscal year.

"(3) UNUSED VISA NUMBERS FROM FISCAL YEARS 1992 THROUGH 2007.—The number computed under this paragraph is the difference, if any, between—

"(A) the difference, if any, between—

"(i) the sum of the worldwide levels established under paragraph (1) for fiscal years 1992 through 2007; and

"(ii) the number of visas actually issued under section 203(b), subject to this subsection, during such fiscal years; and

"(B) the number of visas actually issued after fiscal year 2007 pursuant to an immigrant visa number issued under section 203(b), subject to this subsection, during fiscal years 1992 through 2007.".

(b) WORLDWIDE LEVEL OF FAMILY-SPONSORED IMMIGRANTS.—Section 201(c) of the Immigration and Nationality Act (8 U.S.C. 1151(c)) is amended to read as follows:

"(c) WORLDWIDE LEVEL OF FAMILY-SPONSORED IMMIGRANTS.—

"(1) IN GENERAL.—

"(A) BASE LEVEL.—Subject to subparagraph (B), the worldwide level of family-sponsored immigrants under this subsection for a fiscal year is equal to—

"(i) 480,000 minus the number computed under paragraph (2); plus

"(ii) the sum of the number computed under paragraph (3) and the number computed under paragraph (4).

"(B) MINIMUM.—In no case shall the number computed under subparagraph (A) be less than 226,000.

"(2) NUMBER OF CERTAIN ALIENS NOT SUBJECT TO DIRECT NUMERICAL LIMITATIONS.—The number computed under this paragraph for a fiscal year is the number of aliens described in subparagraph (A) or (B) of subsection (b)(2) who were issued immigrant visas, or who otherwise acquired the status of an alien lawfully admitted to the United States for permanent residence, in the previous fiscal year.

"(3) UNUSED VISA NUMBERS FROM PREVIOUS FISCAL YEAR.—The number computed under this paragraph for a fiscal year is the difference, if any, between—

"(A) the worldwide level established under paragraph (1) for the previous fiscal year; and

"(B) the number of visas actually issued under section 203(a), subject to this subsection, during the previous fiscal year.

"(4) UNUSED VISA NUMBERS FROM FISCAL YEARS 1992 THROUGH 2007.—The number computed under this paragraph is the difference, if any, between—

"(A) the difference, if any, between—

"(i) the sum of the worldwide levels established under paragraph (1) for fiscal years 1992 through 2007; and

"(ii) the number of visas actually issued under section 203(a), subject to this subsection, during such fiscal years; and

"(B) the number of visas actually issued after fiscal year 2007 pursuant to an immigrant visa number issued under section 203(a), subject to this subsection, during fiscal years 1992 through 2007.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the first day of the first fiscal year that begins after the date of the enactment of this Act.

○

Ms. LOFGREN. I don't want to just berate. I am searching for how we can help accomplish the goals that Congress has set into the law.

I hear State Department's technology issue. In fact, I had an opportunity to look at the London Embassy a couple of years ago on the new technology. It is very cool. Where are we in USCIS on the technology front? Is part of our problem our work-flow problem, a technology problem? We heard earlier in the year, in last year about the transformation program. We haven't heard anything about it in a while. Can you tell us what role that plays and where the transformation program and IT is?

Mr. AYTES. Yes, ma'am. The transformation is going through a procurement process right now. We anticipate awarding a contract to a prime vendor later this summer. We already have, using some existing contracts, a pilot in place that we are using to process orphaned petitions. That has proven to be fairly successful.

You are correct. One of the issues for us is having the technology infrastructure that supports the production management of cases. But one of the things that we found in working with State over the last few years is that part of our focus has had to shift. Traditionally we have looked at processing cases on a first in, first out basis to be fair to all customers. Well, that is not the optimal model when it comes to trying to maximize visa issuance because the first—the oldest case may be for an applicant who is going to have to wait a far lengthier period of time before they are going to be able to immigrate. So now we're moving more and more toward processing petitions, not just adjustment applications, but petitions based on anticipated shifts in priority dates from the State Department. That is what has led us to do a far better job this year with respect to adjustment applications and utilization of visa numbers.

Ms. LOFGREN. Short of fully implementing the transformation program, what steps is the agency taking, particularly in light of last July's visa bulletin dust-up to ensure that it is going to actually adjudicate sufficient cases to use all of the immigrant visa numbers this fiscal year?

Mr. AYTES. That has to do with the increased coordination with the State Department. Where we are talking weekly about moving priority dates forward, that is more of a joint discussion at this point than it was historically. We are able to provide far more data to State with regards to our existing inventory so that they understand the chargeability and they can understand if they move a priority date forward what the anticipated yield might be in terms of additional applications for an immigrant visa or for adjustment coming forward. In those respects, I think we are making substantial progress.

Ms. LOFGREN. Let me ask the State Department really the same question or a similar question. What changes in the law could we make that would make it easier for you to do your job and allow all of the visas to be allocated?

Mr. OPPENHEIM. I think the REAL ID Act of 2001 was a very good step forward in that regard. That eliminated the per country limits if there were going to be otherwise unused numbers. Those per country limits in earlier years had often prevented having the maximum amount of numbers used. So that is a tremendous step.

The contemplated bill will be the final step, I believe, and it will allow us instead of having to have unused numbers fall across to the opposite category, they can be retained for use in that category the following year. That is a tremendous step forward and will allow—if for one reason there was—we were unable to use the numbers this year, then we would have the following years to use them.

Ms. LOFGREN. So that would give you a little leeway in your estimates? You wouldn't have to hit perfection every——

Mr. OPPENHEIM. Exactly. It is a perfect solution.

Ms. LOFGREN. Well, that's good news. I think that the crossover of unused between family and business probably was established at a time assuming that there would be—the reason for the use was lack of demand when in fact it is lack of processing. So the whole assumption is incorrect and I don't think it is working—it is not working at all right now is what you are saying?

Mr. OPPENHEIM. Correct. The events have overtaken the original enactment of——

Ms. LOFGREN. Very good. Well, Mr. Sensenbrenner is a Member of the full Committee, not the Subcommittee. But I'll make sure that he also knows that you're happy with that provision of the bill.

My time has expired. So I will turn now to Mr. King for his questions.

Mr. KING. Thank you, Madam Chair. And again, gentlemen, I appreciate your testimony. Just as I'm looking as these numbers—and I'm going to bring some of my own numbers out in addressing Mr. Aytes' testimony. My math comes out—the statutory limit in these categories we're talking about is 226,000 plus 140,000. So for a total of 366,000 annually. If that meets your numbers. And then I look at the reported numbers here that for 2007 we reached the number of 194,900 in the family-sponsored preferences. And in the employment-based preferences, we reached the number of 162,176. So adding those together, it comes 350,076 out of the 366 available.

Is that consistent with what you have for records—I'm watching Mr. Oppenheim. So perhaps I should send him the question there.

Mr. OPPENHEIM. The family total is actually approximately 203,000. So it was a little bit more.

Mr. KING. So that would be another 9 to 10,000 more. Does that mean, then, that you have reached this limit almost perfectly, 99.something percent of the available slots for 2007?

Mr. OPPENHEIM. Within about—2007 we were under——

Ms. LOFGREN. Could you turn your mic——

Mr. OPPENHEIM. During the course of the last 3 years, we've done about 95 percent of limit. Last year there were approximately 22,000 unused in the family category versus the limit. One hundred percent of the numbers available in the employment category were utilized last year.

Mr. KING. But if I add these two numbers together that are in my chart and then add the correction in, we are up to 365,000 total. What is your total for both categories, the family-sponsored and the employment-sponsored?

Mr. OPPENHEIM. My total is approximately 202,000 on the family and approximately 154,000 on the employment.

Mr. KING. Okay. I'm doing the math. 356 is your number. We are a little bit off on this. I think, though, the bottom line comes back and remains the same, which is as you testified, it is really not possible to reach 100 percent without taking the risk of going over the statutory cap.

Mr. OPPENHEIM. Correct.

Mr. KING. And then I thank you, Mr. Oppenheim. And I turn back to Mr. Aytes then.

In the report there was, I believe referenced by Chair Lofgren in her opening remarks, that there was a 17 percent decrease in legal immigration from—in this past year. And it says—in my report it says due primarily to application processing issues at USCIS. What would that be, that 17 percent reduction that was referenced in the Chair's opening statement?

Mr. AYTES. Well, application processing issues is a very broad phrase. Our adjustment—our numbers in 2007 were about 17 percent lower. But that was a result of three things. First, in the last 10 years there have only been 2 years that were higher than 2007 and that was 2005 and 2006. The reason it dropped in 2007, the primary reasons, were the REAL ID legislation lifted the cap on asylee adjustments. That allowed us to move a backlog number of asylee adjustments into the production process. After the REAL ID Act was passed, we developed a 2-year production plan. So our production really surged in 2005 and 2006. It dropped off in 2007 as we brought that back into a better equilibrium.

Mr. KING. I do understand that. In other words, you had your surge of applications that took place but also you had a surge of processing that threw the numbers a little out of balance. So it came back to a little more normal level for 2007.

Mr. AYTES. Yes, sir. There was also the effect of two of the preexisting capture programs. There are basically three programs that allow the recapturing of unused numbers. The REAL ID Act allowed for the recapturing of numbers that were unused in 2001 through 2004, about 50,000 employment-based numbers.

Mr. KING. Thank you.

Mr. AYTES. And the American Competitiveness Act of the 21st Century allowed us to recover unused numbers from 1999 and 2000. That allowed us to increase production and collectively grant permanent residence to more individuals, and we primarily were able to take advantage of that in 2005 and 2006. So again that caused the corresponding drop-off in 2007. Those changes alone account for about 50 percent of the drop in 2007 from 2006. The remainder was that we were moving out of our backlog elimination program. The subsidy that the Congress had afforded us had ended. We were downsizing our capacity to a degree. So we were not processing as many cases in 2007 as we were when we were on a backlog elimination mode in 2006.

Mr. KING. Thank you. And with indulgence, a couple of pieces of curiosity. I'd like to close fairly quickly here.

One of them is how many were admitted to categories that do not have limits? We are talking about limited categories here. But there is also other categories where it is unlimited, especially to the family-sponsored immigrants.

Mr. AYTES. We can get you that information. There are a broad number of categories from immediate relatives to refugee adjusts, asylee adjustments, certain other categories where there are not numerical limits.

Mr. KING. May I just ask that so that we are talking about this within the context of the overall immigration policy. And then in conclusion and in following up on the Chair's inquiry of modernization of USCIS, my question was simply going to be are these applications digitized. But I think I should get a little more precise with that and ask if—of all of the applications that come in and all the processing that you have and including the religious worker visas, but of all of them, is there a database that exists that I could sit down in a room with your data processors and start to ask analytical questions and those categories could be sorted in a fashion that would satisfy my curiosity or are we dealing with paper records that take forever from a manpower standpoint to be analyzed?

Mr. AYTES. We are at this point dealing with very basic systems that give us inventory control and the ability to manage the processing of cases at a very basic level. We are working under transformation to give us that analytic capability, not only to be able to look at the cases in more detail, but be able to determine which cases need what level of attention in a far better way than we are able to do today.

Mr. KING. I would just submit that from my view I would look forward to the kind of request of this Congress that would allow us to bring these records into the 21st century so that we can provide the efficiency that this government should provide.

And I thank you all for your testimony. And, Madam Chair, I thank you and I yield back.

Ms. LUFGREN. The gentleman yields. I recognize the gentleman from Chicago, Mr. Gutierrez.

Mr. GUTIERREZ. Mr. Edson, I'd like to ask you because I have your bulletin here—and English is my second language, so bear with me. But it sets an annual minimum—you kept using the word "limit"—of family-sponsored preference at 226,000. And then when I go to Immigration Nationality Act, it says in no case shall the number be computed on the—be less then 226,000. So is 226 the maximum or a minimum? What is it, is it a floor?

Mr. EDSON. If I could defer to my colleague, Mr. Oppenheim.

Mr. OPPENHEIM. Yes, the 226,000 was established as a floor.

Mr. GUTIERREZ. Good. It is a floor. So the next time I get in line at Target and it says no limit, 10, I shouldn't feel like I should use the Oppenheimer rule here and say I can bring 20, right? It actually means 10. So your whole argument about, well, we don't want to exceed, you actually don't want to exceed the minimum, the floor. So there really is no limit. It says shall not exceed. I'm reading this and you said it is a floor, just using your word. You said it is a floor—shall not exceed the annual minimum family-based preference of 226. And it says minimum, and then the statute, it says shall not exceed.

Mr. OPPENHEIM. The minimum floor is the limit for the year, though, that we are not allowed to exceed.

Mr. GUTIERREZ. Really? Where is that in the statute? I just read you the statute.

Mr. OPPENHEIM. Well, the computation—the way the annual limit is determined, we start out with a maximum level of 480,000 visas. From that we subtract the amount of immediate relatives who were processed the preceding year. Then we add back in any potential unused employment numbers. Whatever that result is would be the annual limit. If it were 250——

Mr. GUTIERREZ. So there is another part of the statute?

Mr. OPPENHEIM. Yes. If that resulted in 250,000, that would be the family limit. But if the total was 100——

Mr. GUTIERREZ. Thank you. It is just I read your bulletin. I think you might want to add that to your bulletin. Because if I read the bulletin, it says minimum. And as I read the statute, it says shall not exceed. So when I look at those two parts of it, obviously not understanding your comprehensive understanding of the way it works, that that would be it. So if we went back—and trying to respond to the minority here—we went back and recaptured all of these family-based visas and went back to 1992, as the gentlelady—chairwoman proposes to do, we would recapture how many?

Mr. OPPENHEIM. Approximately 95,000, which have not already been recaptured in one form or another.

Mr. GUTIERREZ. Okay. So 95,000 would reduce the waiting limit for someone waiting for their brother in the Philippines from 21 years to 20 years?

Mr. OPPENHEIM. Potentially.

Mr. GUTIERREZ. You guys issue the bulletins.

Mr. OPPENHEIM. Correct. So——

Mr. GUTIERREZ. Okay. Let me just ask you. What is the max you know of, family reunification under these visas, for a brother? I'm not—you know, for a brother, immediate family member. What is the maximum waiting period from any country?

Mr. OPPENHEIM. For the Philippines it would be March 8, 1986.

Mr. GUTIERREZ. Okay. So I'm not off base here. It is 22 years. So if we recaptured all of these visas, maybe we would cut 6 months off of that wait for that brother? So instead of him being—if he is 21, 43 years, he would get here when he was 42½ years. And whoever is applying for them, if they were 30, he would only be like 50 some years when he finally got his brother here. I just want to put this in some context since we heard about all these people coming and all this surge to America and how this might impact the surge. Indeed, is it not true that these visas for the most part—I mean, in the family we are talking about a husband, a wife, right, for permanent residence? Just stop me when I name a person that isn't included in here. We're talking about children, right, children. And we are talking about brothers and sisters. Not talking about aunts and uncles and cousins, are we? Those aren't included, right? It has just got to be in the immediate family. Well, it seems to me to be the great American tradition, according to my colleagues on the other side, about family values and bringing families together. I would think they would be cheering on and applauding us as we wish to bring a husband and a wife, brothers together, husbands and wives and children together.

So I just wanted to kind of put in some kind of context the kind of surge language that we heard earlier. And hopefully on the sec-

ond turn I will have some more questions if the gentlelady gives me a second chance. I'd like to ask you a few more questions. Thank you so much for your testimony.

Ms. LOFGREN. I think if we can stay—it has been less than an hour—we might do a second round of questions since we have got you here and this is a technical issue, but very intensely interesting to all of us.

I'm just looking at the visa bulletin. I don't know Mr. Oppenheim, but your name is famous when it comes to the art of predicting these visas. For example, if you are a member of the profession holding an advanced degree or a person of exceptional ability and that has been already—you've been judged that person of exceptional ability with advanced degree but you were born in China, you can't get a visa; even though the Department of Labor has already said you've been offered a job that there is no American available to fill, only those that filed in 2004 are getting their visas today. And as Mr. Gutierrez has mentioned, if you are the husband or wife of a lawful permanent resident of the United States, somebody who played by all the rules and you were—your spouse was born, you know, in the Philippines, you're only getting your visa this month if you filed in June of 2003. So we are keeping husbands and wives who are following the rules apart for a long time.

Is there any way to estimate—I don't know if you had a chance to take a look at the bill that Mr. Sensenbrenner and I introduced—what kind of relief would be given in the two cases I have outlined?

Mr. OPPENHEIM. The recapture would—at this point, it would be approximately 225,000 numbers combined, both family and employment. It would provide a fair amount of relief in the employment. It would be—we would be able to advance, for example, the China and India cut-offs in the second preference. Many of the employment categories are already current. So it would provide some relief, not a lot.

Ms. LOFGREN. Right. What about the husbands and wives who are separated?

Mr. OPPENHEIM. The husbands and wives, the 93,000 we would recapture would be—about 50 percent of those would potentially go to the husbands and wives based on the calculations, the way the annual limits are determined.

Ms. LOFGREN. Okay. So it is not going to be immediate, but we——

Mr. OPPENHEIM. It would be a first step.

Ms. LOFGREN. The first step to healing the pain. One of the things that we used to have was a temporary visa so that spouses who were separated wouldn't have to be apart. And that may be something we are going to want to take a look at if we proceed, if this doesn't really solve—you know, the idea that a husband and a wife—when you take your marriage vows you mean it and then you have to live apart for half a decade. That just doesn't seem really like the American way to me. So in addition to this, maybe we need to explore other possibilities. I'm wondering—and maybe this isn't a fair question. But the Department of State's technology seems to work fairly efficiently. And you have access to the data-

bases, you can pull up the pictures and the biometrics and your network. One of the questions I have had is whether we could simply expand that system that already exists to the Department of Homeland Security and have one system rather than two competing systems.

Do you think, either of you, whether that would be viable? What is the problem with that, if there is a problem?

Mr. AYTES. If I may. Both of those systems are somewhat tailored. We are working to try to share data more effectively through a data share initiative and we are now importing information from their systems such as biometrics, photographs and identity information so that we can verify identity at an early step in the process before we are issuing documentation. We are making steps in that respect. I think it would be very difficult for us to completely use one system to serve all the varying purposes and the services that we provide.

Mr. EDSON. We do coordinate very closely on our automation needs on information sharing and data, particularly at a technical level database interoperability. One of the real lessons we learned after 9/11 was the importance of focusing on making our database systems interoperable rather than talking about monolithic unified systems. We have—in the State Department we have a single database, a corporate database structure and then use applications that are tailored to the specific process which would be different than the CIS process to feed back into that back end and we do share a common vision of the end of the transformation process being a completely sort of transparent view into each other's data sets.

Ms. LOFGREN. Let me just have a final question. Has the Department of State been involved in the development of the transformation plan?

Mr. EDSON. Certainly. I actually sit on the—I forgot what it is called—the Transformation Steering Committee, I think. But, yes, we've been consulted all along.

Ms. LOFGREN. We may want to have a hearing on the whole computer issue at some future date, I think. We'll get really nerdy on you and take a look at it.

So I will defer to Mr. Lungren for his questions now.

Mr. LUNGREN. Thank you very much, Madam Chair. I'm sorry I was late. I was greeting constituents on the east steps of the Capital, young people, and talking to them about this great institution we have here. So I'm sorry I have missed most of the testimony. But this is just a general question I have, and any one of the witnesses or all of the witnesses can answer.

I first started on Judiciary Committee, Subcommittee on Immigration in 1979, served on it for 8 years, left 2 years later, came back here after a 16-year respite in California, got back on the Immigration Subcommittee. And some of the issues just remain as they were back in 1979 and through the '80's. And one of the things that really concerns me is that while we struggle with the issue of illegal immigration, we have this other body called legal immigration. We have people who follow the rules and yet we seem to have backlogs and backlogs and backlogs and we seem to take time and time and time. And I realize you've been here and presented reasons why and so forth.

So let me just ask two questions.

Number one, is there any suggestion that the reason we continue to have backlogs and the reason we can't move faster because of the heightened concern after 9/11, number one?

And, number two, do any or all of you understand the frustration that is out there among those of us in Congress who want to have a system that works and who find it difficult to defend a system when people say, folks who want to come here illegally have, until recent times, had a fairly easy job of getting over here, but folks who follow the law and do everything they are supposed to wait for the bureaucracy to work for seemingly unacceptable periods of time?

Do you understand that? Is that totally outside the scope of reason? And if you understand it, how do we in Congress work with you to get the sense of urgency to get that side of the immigration house working?

Mr. AYTES. If I may, certainly we do understand it. We get the same complaints and concerns that you all hear each day. And we have to deal with the issues that it creates locally, just as you do.

There are really two kinds of backlogs, though, that we need to speak of. Certainly we have processing backlogs at times. We had a backlog reduction effort over 5 years to try and eliminate some of those issues, with some success. We are working through a surge of applications right now. It is our responsibility to process those cases timely and to provide people the services that they have applied for and are eligible for. We understand that responsibility.

But there is a second backlog that we are also speaking of here. The law sets certain numerical limits on how many people may immigrate to the United States in many of these categories annually. We may approve that petition, and that person may by law then still have to wait because demand is so far greater than the available supply of visa numbers that the person is simply—it is oversubscribed. It is like a movie show that there are far more people who want to get into the movie than there are available seats, and people have to wait outside the movie theater for the next show. Well, we do that on a massive scale.

Some of the numbers that you have cited with people who have are waiting for 20 years or more to immigrate, that is not because of we have a petition or because they have an application for permanent residence. It is because they are so far back in that queue of people waiting to immigrate because there is a mismatch between the eligibility category of how many people can qualify to get in line versus the number of people who are allowed to immigrate in those categories each year.

And we feel that pain, as well, because it is hard for people to understand two different kinds of backlogs. And if you have a relative who is waiting that long, you are just as likely to come to either of our agencies to complain about our backlog and our inability to process that case and get your relative here as you are to understand that there is a completely different process.

Mr. LUNGREN. Okay. The second type of backlog is actually on Congress, meaning that we make decisions as to how many numbers you can have in the certain categories. And I understand that. And that is a judgment we make.

With respect to the processing side of it—and you say that you have worked on improving the surge and so forth—where are we on that right now? What would you say in terms of how the institution stands up in getting people through that, as opposed to where it was 5 years ago? And where could we expect to be in a couple years?

Mr. AYTES. Relative to 5 years ago, we are far, far better off than we were.

Relative to where we were a year ago this time, before the surge in applications that we saw as a result of interest in people filing early before our fee changed, before the adjustment opportunity that people had, 300,000 people, to apply for permanent residence based on the Visa Bulletin, before the huge interest in naturalization that we saw last summer, we are not where we were a year ago.

But we have a plan with this fee rule, and we are making progress. We have increased our goals, for example, in naturalization. We are going to complete 36 percent more cases than last year and still maintain our commitment to quality in adjudicating each and every one of those applications.

Under this plan—and we are on target—within 2 years, we will not only be back where we were before the surge, we will be meeting the service levels that we committed ourselves to when we announced those fee changes.

Mr. LUNGREN. I thank the Chair.

I would just say that the good news is people still want to come to this country in overwhelming numbers. The bad news is it is always a challenge for us to deal with that. And I hope we will never be in a position where people don't want to come to this country.

Thank you.

Ms. LOFGREN. Thank you.

Mr. Gutierrez is recognized for 5 minutes.

Mr. GUTIERREZ. Thank you.

First of all, I want to thank all of you for your work and your public service. I didn't say that the first time around. I really mean that, because my staff is always calling you folks, because we have hundreds of people that stream into our office, literally hundreds, every week, and most of their questions are directed either to the Visa Bulletins, which is pretty easy—we give them an answer, we tell them where they are in the queue—or you have the application and we are trying to get that application.

And the citizenship stuff is working, at least in Chicago, is working very well, and people are—the citizenship applications—we have noticed people more quickly becoming citizens and getting through the process. So I want to thank you about that.

I know we have to talk about nationally, too. But I am excited about meeting the 1 million citizenship goal in this year. So I think that that is a really exciting prospect.

And we are going to do everything we can to keep you busy and keep all those people employed and have another 8 million to 9 million permanent residents out there that we want to keep coming your way.

I did want to ask, because, as I look at this—and without getting into a conspiracy of Republicans and Democrats—but it seems that,

as I look back to 1992 through the current year, that there is a difference in the way the visas were allocated, in terms of reaching the maximum number.

Under Clinton, for example, from 1993 through 2000, now throw in 2001, you had difficulty reaching the number of employment-based visa, much more difficult problem reaching those than you did reaching families. I mean, there were some years under the Clinton administration it was zero, literally zero, in families.

Then, when we got the Bush administration in, and you see President Bush came in in 2001, then it was zero, zero, zero, zero, zero, except for 2003, it has been zero in the employment. Just the opposite. So you guys have done a stellar job on employment, but then we got increases in families.

Is there any reason other than someone would think we were pro-business and get the business ones done and maybe family took a backseat, since it is zero for 80 percent of the years of the Bush administration on and obviously an increase in family?

Mr. EDSON. Thank you for the question. One of the things we haven't spoken about yet is demand by immigrants that come to the United States.

In the 1990's until the dot-com boom, thereabouts, the numbers were available. The Visa Bulletin each month, month after month, said that the number was current. Anybody who wanted an employment-based visa could get one, and there wasn't the demand. I think that is a large part of what you are seeing there is that fact.

Mr. GUTIERREZ. So the reason there were so many unfilled is there was a lack of demand for them?

Mr. EDSON. Right.

Mr. GUTIERREZ. And there was an increase of demand when Bush became the President of the United States?

Mr. EDSON. There was an increase in demand in the late 1990's.

Mr. GUTIERREZ. After year 2000, there was an increase in demand for worker-related petitions right?

Mr. EDSON. Right.

Mr. GUTIERREZ. And, therefore, you easily reached zero, because you don't have—you have a full demand.

Mr. EDSON. Right.

Mr. GUTIERREZ. Because Mr. Aytes told us it was a question of demand was greater than supply. So here we have a demand-and-supply issue.

Mr. EDSON. Right.

Mr. GUTIERREZ. That clarifies it.

I won't give a speech or a sermon or anything about a conspiracy trying to keep families separated. It is just a logical thing about how it works in the supply and demand. That sounds very, very logical.

Then let me ask you, if you could, just so that I understand it, since I explained to you earlier, as I read it, it said "no less than 226," and, you know, minimum. And then Mr. Oppenheim used—I think, take that word back; it was a floor for family visas.

If you could reconcile, not right now, but reconcile in writing and say, "Hey, Congressman, you got that part right, but here is the part you forgot," so that I could better explain it to other people

in the future so that we won't have another conspiracy that you guys aren't just meeting the minimum, but actually the maximum, because I think it is important.

So, Mr. Oppenheim, because I know you have the numbers, so I am a permanent resident. I am from Mexico. I apply for my wife. How many years do I have to wait for my wife to get a Visa to come to the United States? I'm a permanent resident.

Mr. OPPENHEIM. Probably be 7 to——

Mr. GUTIERREZ. Okay. And if we recaptured all those family reunification visas that we are talking about in this legislation, the 95,000, and half of them went to spouses, that reduction would be from 7 to what? How many years would I have to wait for my wife?

Mr. OPPENHEIM. Maybe 6.

Mr. GUTIERREZ. Maybe 6. Good. So this is really not going to cause a wave of people, and this is really about husbands and wives, people who are here legally in the United States—you guys don't do any undocumented workers. You don't have a bulletin, because if you do, I want it, so I can take it back to Chicago. I am sure people would be happy to see it.

You are talking about legal, permanent residents and citizens to the United States. That is what you issue Visa Bulletins for. And those are the only things Mr. Aytes tries, at least to the best of his ability, to process in his agency.

Mr. AYTES. Yes.

Mr. GUTIERREZ. Although I am happy the FBI lost that case, I have to tell you quickly, because I think they weren't doing their job.

So when people say "without numerical limits," we are not talking about—we are talking about those without numerical limits are American citizens, right? That is without numerical limits. I just want the other side to understand when they use the words, "without numerical limit," they are talking about the ability of American citizens.

And I don't think that Congress, when it enacted the legislation, did not contemplate that an American citizen should not be able to bring his wife to America or minor children, minor children, not married minor children, immediately to America.

So I thank you for your testimony.

I thank the gentlelady and the Chairwoman of the Committee for her work on this. We kind of put this in the STRIVE Act, but we didn't go all the way back to 1992. We kind of captured 5 years and then recaptured them, because we thought it was important. I like this little piecemeal kind of reform of immigration.

I thank the gentlelady, and I thank her for her time. Thank you.

Ms. LOFGREN. The gentleman yields back.

And I would recognize the gentleman from Texas, Mr. Gohmert.

Mr. GOHMERT. Thank you, Madam Chair. And I do thank you for having this hearing. This is exactly what I was hoping the kind of thing we would have with you as Chair, and I appreciate it very much.

And I missed a good portion of the testimony; I will be getting that. But there are some things that have come up, just in a personal situation, where we had a plant that was going to open in Harrison County, and a Belgian company was going to open it.

They were going to hire people in east Texas that needed the jobs. It was going to be a good thing.

The only thing they were asking was that we would like the manager of the plant to be from Belgium, where the home company was. And they had extreme difficulty in getting a visa approved. I said, "Well, have your attorney that is working on it call me." From New York, he did and said, "Well, we have been waiting forever. Then we are told, 'Well, gee, if you pay a thousand-dollar fee, we will be able to expedite it.'" So they pay the thousand-dollar fee, and then, months later, they said, "Where is the expedition?" They said, "Well, they did expedite it through one phase, but if you would like it through the next phase, another$1,000 will get that moving too."

And so I wasn't familiar with the more than one expedition fee. I don't know if he got bad information or what.

But then we've had the ombudsman report that indicates that even though President Bush had said he wanted to dedicate $100 million to speeding up the process of moving these visas through, that, according to the ombudsman report, Immigration Service was able to generate $400 million by slowing it down, creating additional fees.

And so, according to that report, it looked like there was more incentive to continue to slow things down and have more money coming into play with than to take $100 million the President offered to speed up the process.

So I would be curious to hear your responses on those two issues.

Mr. AYTES. First, I would enjoy the opportunity to take a personal look at that case and see what happened, if you could give us the specifics.

Mr. GOHMERT. Sure.

Mr. AYTES. Second, we understood people's perception that, the way the fees were previously structured, that there might be a sense that we would gain something by being——

Mr. GOHMERT. But you understand, once the ombudsman report came out, it wasn't just a perception. We had a graph that was more than a perception. It showed, here is the money coming in.

Mr. AYTES. That is the reason why we specifically changed the fee rule last year. If we delay on processing a case, because of a capacity issue, because of an eligibility issue, and we are not able to make a decision in time, an applicant for a permanent residence will pay no additional fees. Any additional cost for us to process continued interim benefits, like employment authorization or travel authorization, will be borne by USCIS.

We wanted to change that perception. We wanted to change that paradigm, and that new fee rule made that change.

Mr. GOHMERT. Thank you.

"Paradigm," that is 20 cents, isn't it? [Laughter.]

I am just kidding. Yeah, that is Texas humor.

One of the things that I heard from one extremely large and frustrated employer, who was trying to get enough workers to make a go of things, said, getting a visa takes so long through CIS—and, you know, people get to be successful businessmen, often, by thinking outside the box. He said, "Look, the Department of Labor does things quickly and efficiently. What if we get the Department of

Labor to help on these things, where maybe it is an H-1B or a visa where we are showing, as employers, they have a job, that we have not been able to find a U.S. citizen to take the job, work through the Department of Labor to somehow speed it up?"

So my question to each of you, anybody that cares to address it, any other common-sense kind of changes that could be made to the law that we could get through? And I know, Chair Lofgren, Lungren, all these folks here would love to participate in any kind of changes that we could agree on on a bipartisan basis to move things more quickly.

We have some that have been proposed. Some we may not agree on, some—but have you got anything you can leave us with that may be additional, small, common-sense changes to move things along? Even if it is something like working with the Department of Labor on some part.

Mr. AYTES. Well, thank you. We will have to get back to you on that. We don't have a ready list.

Mr. GOHMERT. Is it going to take as long to get back with us as it would to get a visa for your wife?

Mr. LUNGREN. You need a thousand bucks.

Mr. GOHMERT. Oh, okay. If I give you a thousand bucks, would you get back with us a little quicker?

Anyway, I am sorry——

Mr. GALLEGLY. Would the gentleman yield?

Mr. GOHMERT. Yes.

Mr. GALLEGLY. I have listened to the process of all these thousand-dollar payments and so on and so forth. I have been dealing with INS for the 22 years I have been here, and I would just like to make an observation.

If INS was a public company, I would certainly not recommend to my friends to invest a lot of money in it. I don't think it is profit-making.

Mr. GOHMERT. Yeah. That is true. Reclaiming my time.

I am sorry. I will not interrupt, but I would be curious about your comments.

Mr. AYTES. We do have a lot of challenges. For example, it was H-1B season, beginning of April. We opened the filing window for 5 days. We accepted 163,000 applications for 65,000 available visas and 20,000 available under the Master's Cap. We have to sort through those. We have completed that process. We have run that lottery. We are processing the premium cases timely. And premium doesn't get you any better opportunity, with respect to the lottery. But after we identify that the case is a winner of the lottery, we are able to process it quickly.

We are trying to process all the remaining H-1B cases within a 60-day time frame after we data-enter those cases. We understand that people expect a certain level of service from us, and they expect us to be able to tell them up front, before they choose to file, how long it is going to take.

I think we've started to get better information out about our processing times and about our goals. But I do admit that we have a long way to go.

We are making some progress. That backlog of applications that we started to receive as a result of the surge of volume that we re-

ceived last summer, we are starting to work through that significantly.

We are going to meet the processing goals that we have committed ourselves to over a 2-year span. It will be later than we hoped in the fee rule, but that was before we saw this surge of applications.

And we do believe we will be able to offer far more regular service to each individual customer, each applicant, each company that is filing a petition, as we reach that goal.

Mr. GOHMERT. Any other comments, suggestions?

I know you said you need to get back with us. I hope you will. We are open to proposals.

And I appreciate the Chair's indulgence.

If I could just have this final comment, you know, in talking to people from other countries and as we travel around and visit with different groups, and some of them are just folks on the street, not other governmental officials, we have so much pride in this great country, I think it is the best country in the world, but, to some people, their only exposure to this country is you, in CIS.

And when they say, you know, "We dealt with the United States, and we found the most backward, third-world countries are easier to deal with than your country," it kind of hurts. You are the image that so many people around the world have of the United States, and I appreciate all the efforts you can make to help that be a good image.

Thank you, Madam Chairwoman.

Ms. LOFGREN. The gentleman yields back.

The Ranking Member is recognized.

Mr. KING. Thank you, Madam Chair.

Mr. Aytes, I have listened to this discussion here, and I am looking forward to further exploring the modernization and digitation of records.

But I also have another curiosity. And as I read some news reports from around the country and pick up on the grapevine of what is flowing and what is going and what people have for motivations, the question occurs to me that there have been those who have advocated for expediting these applications in a fashion inconsistent with the need to provide for our national security and the background checks.

My question is going to include LPR applications, as well as naturalization. And I ask you if you are aware of or have you been appreciate by any Members of Congress, including the House and the Senate, to expedite these applications, either LPRs or naturalization, by waiving background checks or been pressured to reduce the amount of due diligence that is done with background checks in order to get us through this group that we have now and get us on the other side and get back caught back up again.

Has any of that taken place?

Mr. AYTES. I think there is been a general interest in hoping that we will be able to do more, but do it well and do it correctly.

We do have certain expedite programs—premium processing, for example. We do expedite military naturalizations wherever possible.

I am not aware of any direct contact encouraging us to consider waiving background checks, consider making changes that would mitigate the quality of the adjudication, the decision that we make.

Mr. KING. And I appreciate that testimony into the record. If there were evidence to the contrary or if something like that happened in the future, how would you deal with that?

Mr. AYTES. I think it would depend on the situation as it arose. We are going to maintain the integrity of our process, sir, first and foremost. And we will deal with whatever suggestions with regards to process changes, whether they be legislative, regulatory or procedural, as they come. But we are committed to making a right decision on each application, first and foremost.

Mr. KING. If there were evidence to the contrary or an incident that could be brought to light that perhaps has taken place or might take place in the future, your statement to this Committee is that you will maintain the standards of integrity in background checks that is consistent with what has been aspired to in the past and consistent with statute?

Mr. AYTES. We will be maintaining procedures that are consistent with statute and that ensure the quality of the adjudication. It does not mean that we are not open to making changes that don't affect quality.

Mr. KING. And if you were, if there were a backlog in background checks with LPR applications, then that is simply—would you then expedite any of those applications, or are you compelled then to wait until you get the background checks done?

Mr. AYTES. You may be referencing a February memorandum that we put in place——

Mr. KING. Perhaps.

Mr. AYTES [continuing]. That allowed us to—we instructed our field offices to move forward with adjustment cases where we had not gotten the final result of the FBI name check.

We did that to come into a parallel process that our sister agency, ICE, has followed for years, given the fact that we have the opportunity to remove those people if any information, derogatory information, comes forward.

Mr. KING. If you can find them.

Mr. AYTES. Well, the fact that we are allowing these people to remain in the United States while their application is pending with literally all the same privileges of travel and employment that they would have if we granted their permanent residence.

Mr. KING. And would you be more concerned if that were a naturalization process as opposed to an LPR application?

Mr. AYTES. Absolutely, because it is so much more difficult to take naturalization away than it is to take permanent residence away in removal proceedings. That is specifically why we did not include naturalization in that instruction.

Mr. KING. I thank you, Mr. Aytes. And I appreciate that being in the record.

And, Madam Chair, I appreciate a second round. I yield back the balance of my time.

Ms. LOFGREN. That is fine.

Let me just ask two remaining questions, and they are really, I guess, for you, Mr. Oppenheim, or Mr. Edson.

I think there are only two former immigration lawyers in the United States House of Representatives, myself and Mr. Goodlatte. And we don't agree very often on immigration issues, but one thing we did agree on had to do with the per-country limitation.

We put a bill into the hopper earlier this week to eliminate the per-country limitation on the employment side and to ease it on the family side and move it up to 10 percent instead of 7 percent.

And the question is, if that is enacted, is that going to be hard to administer, from your point of view, or not a problem to administer?

Mr. OPPENHEIM. From a numeric standpoint, no, it would not be difficult to administer. The problem we would see potentially overseas and with the service is the surge of applicants. These would be resource implications.

Mr. EDSON. Just to follow up on that, given particularly China and India, where so much of this work is done and where our facilities are already operating at full capacity, that would raise an administrative issue of catching up with the ability to process timely.

Ms. LOFGREN. It is for employment, not for the—now, let me ask, and this is something I have always wondered, if you take a look at brothers and sisters, I mean, the most backlogged is 4th from the Philippines. People who filed March 8th of 1986 are getting their visas today.

And I have often wondered, I'll bet you there are people there who have died, I mean, it is so long, or who have changed their minds. I mean, maybe they filed when they were 20, and now they are 45, and they don't want to leave anymore.

Do we have any way of knowing how many people are queued up in these very old categories?

Mr. OPPENHEIM. Since you mentioned the Philippines 4th, there are over 150,000 Philippines 4th preference applicants that have registered abroad, versus a limit annually of approximately 4,500.

Ms. LOFGREN. And do they keep their status?

Mr. OPPENHEIM. They keep it alive, yes.

Now, as you mentioned, it is hard to verify. That is one of the variables which I have to take into consideration: How many people will actually appear for their interview, assuming, you know, that they are still out there.

Ms. LOFGREN. Well, at this point, we have run out of questions, run out of time.

We will keep the hearing record open for 5 legislative days, and if Members have additional questions, we will forward them to you. We ask, in that case, that you answer them as promptly as possible so they can be incorporated into the hearing record.

And, with that, thanks to all who participated. And this hearing is adjourned.

[Whereupon, at 4 p.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE ZOE LOFGREN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA, AND CHAIRWOMAN, SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW

I would like to welcome everyone to our hearing to examine the consistent failure by our immigration agencies to issue all the family- and employment-based immigrant visas authorized by law each year, despite the ongoing demand for such visas.

I find it ironic that in a hearing to examine why agencies cannot issue visas on time each year that we also did not timely receive the testimony from the agencies before us today. We only received the Department of State (DOS) testimony at 5:07 p.m. last night and the United States Citizenship and Immigration Service (USCIS) testimony at 6:24 p.m. last night, with a revised testimony at 9:08 a.m. this morning. I would hope this does not continue in the future when we invite you to testify before us again.

There are a limited number of visas available each year to immigrate to the United States, a floor of 226,000 preference visas per year for family based immigrants and 140,000 per year for employment based immigrants.

Each year, the backlog of people waiting to immigrate legally to the United States grows larger. Approximately four million family-based immigrants are believed be caught in the legal immigration backlog today, while another 400,000–500,000 are believed to be caught in the employment based backlog.

Despite these growing backlogs, the USCIS and DOS regularly fail to issue the legally authorized number of immigrant visas each year. They have only met or exceeded the floor of family preference visas in 5 out of 16 years and only 7 out of 16 years for employment based visas since 1992.

Most recently, the DHS Office of Immigration Statistics observed in its Annual Flow Report for U.S. Legal Permanent Residents that legal immigration decreased by 17% in 2007 "due primarily to application processing issues at USCIS."

To date, there has been little public examination of the reasons for the ongoing failure to issue the legally authorized number of immigrant visas each year when there is clear demand by qualified applicants for these visas.

The only recent examination of this problem is by the USCIS Ombudsman in its 2007 annual report which found that immigrant visas have gone unused due to:

- gaps in USCIS' accounting of cases;
- USCIS not processing enough pending applications in a timely manner; and,
- The imprecise art of predicting workflows and demand surges at the three federal agencies that each plays a role in adjudicating applications, DOS, USCIS, and the Department of Labor (DOL).

My colleague, the former Chairman of the Judiciary Committee Jim Sensenbrenner, and I have developed a proposed legislative fix to not only recapture these unused visas, but also to reform the process that forces us to lose the visas for future use.

I look forward to the testimony today to help us better understand the problems that face the agencies charged with issuing visas so that we may not only address the problems with an appropriate administrative solution, but also determine whether our proposed legislative fix is the right legislative tool to prevent the loss of visas in the future.

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN, AND CHAIRMAN, COMMITTEE ON THE JUDICIARY

As we have learned over the last year, immigration law is an area with a lot of ambiguity and mathematical complexity. Today, however, we are confronting at least one unassailable fact:

> Over the past 16 years, the Department of Homeland Security and the Department of State have failed to issue even the bare minimum numbers of family and employment-based immigration visas that are required by law.
>
> This failure has happened even as U.S. Citizens, Lawful Permanent Residents, and American employers are forced to wait years - and even decades - for their families and employees who are qualified and eligible to immigrate to the U.S.

We have been having immigration hearings throughout the 110th Congress. Everyone comes before this Committee and says how much they want legal immigration. But the backlog of people waiting to immigrate legally to the United States grows longer and larger each year.

Families are separated, making illegal immigration that much more tempting. The best and the brightest give up and go to countries that want to compete with the United States for scientific and engineering talent.

The numbers are mind-boggling:

> Four million family-based immigrants in the backlog.
>
> Up to 500,000 employment-based immigrants in the backlog.

But the State Department and Department of Homeland Security don't even issue the full number authorized each year!

I will be interested in hearing the reasons for these shortfalls.

I will be even more interested in hearing what the Administration proposes to do to close these gaps.

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, AND MEMBER, SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW

Chairwoman, Lofgren, and ranking member King, thank you for convening today's very important hearing on "Wasted Visas, Growing Backlogs" In this hearing, we will examine USCIS and the Department of State's consistent failure to issue the numbers of family- and employment-based immigrant visas authorized under the law each year, despite the ongoing and ever increasing demand for such visas.

There are finite numbers of visas available each year for individuals to immigrate to the United States. The backlog of people waiting to immigrate legally to the United States is growing longer each year. USCIS and State have failed to issue the number of immigrant visas required by law each year. This hearing will investigate the reasons for these failures and will explore possible administrative and legislative solutions to address this problem.

Principally, there are two ways to immigrate to the United States, through employment or through family. Parents, spouses, and minor children of U.S. citizens can immigrate to the U.S. without numerical limitation. However, other close family members of U.S. citizens and Legal permanent residents must wait from 2 to 22 years to legally immigrate.

The current law requires a floor of 226, 000 immigrant visas per year to family members. Current law authorizes a minimum of 140,000 visas per year based upon employment in the United States. All but 5,000 of such employment based immigrant visas are awarded to highly skilled persons. USCIS and State do not issue the visas. There are increasing numbers in the employment backlog from persons petitioning from India and the People's Republic of China. There are 400,000 to 500,000 persons seeking employment based visas that are caught in the backlog.

Despite the backlog, USCIS and State have failed to meet the floor for these visas. They have failed to meet or exceed the floor of 226,000 family preference visas in 5 out of 16 years since 1992. They have failed to meet the floor of 140,000 employment preference visas in 7 out of 16 years since 1992. There has been no accounting or response from these agencies as to why these visas are not being used. The purpose of this hearing is to question these agencies and find out why the floor is not being met and why these visas are being wasted.

Ms. Lofgren, has introduced H.R. 5882, to recapture employment-based immigrant visas lost to bureaucratic delays and to prevent losses of family and employment based immigrant visas in the future. H.R. 5882 takes the unused visas from 1992 through 2007 and restores them to employment and family preference floors. Thus, it makes more visas available for these two categories and uses the unused visas from a previous fiscal year in the calculation for the number of visas in the following year.

While H.R. 5882 does a good job of providing a mathematical formula to recapture the lost visas and make that the pool of visas stays large for both family and employment based visas, the bill does nothing to ensure that USCIS or State actually award the visas. It is this latter aspect that we need to address. I am hopeful that our witness will shed some light on this. I welcome them and look forward to their testimony.

Thank you, I yield the balance of my time.

RESPONSES TO POST-HEARING QUESTIONS FROM MICHAEL AYTES, ACTING DEPUTY DIRECTOR, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES

Question#:	1
Topic:	info sharing agreement
Hearing:	Hearing on Wasted Visas, Growing Backlogs
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

Question: You state in your testimony that:

In concert with DOS, USCIS has made significant changes in recent years to maximize the use of the limited number of visas available annually. These changes include increased staffing, enhanced analytical capacity, more detailed and strategic management of monthly production, and close partnership with DOS to share greater information.

Your testimony described in some detail USCIS's information sharing arrangement with DOS. I would appreciate it if you can also provide specific details regarding the other elements that you mentioned in your testimony, such as:

Increased staffing;

Enhanced analytic capacity; and

Detailed and strategic management of monthly production.

Response: USCIS has dedicated resources specifically for monitoring and managing visa number availability. Staffing enhancements to both field offices and service centers in FY '08 have increased USCIS' ability to respond more quickly to fluctuations in visa availability and act on associated adjustment of status cases to ensure visa usage. USCIS has placed analyst positions in field offices and increased analyst resources in service centers to provide Field Office and Service Center Directors with the expertise needed to research, monitor and analyze data related to visa number availability and adjustment of status production. The dedicated program manager, together with the analysts, is tracking visa availability numbers and reporting regularly to USCIS, DHS and DOS management on production progress.

Question#:	2
Topic:	backlog
Hearing:	Hearing on Wasted Visas, Growing Backlogs
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

Questions: You state in your testimony that:

[USCIS] has built up an inventory of applications for some visa categories that cannot now be adjudicated because the number of filings exceeded the number of visas that were actually available. It also has built up a backlog of applications for some visa categories where competing adjudication priorities have prevented the timely completion of cases, even though visas are immediately available.

Please provide the number of filed and pending applications for each visa categories that 'cannot now be adjudicated because the number of filings exceeded the number of visas that were actually available, and/or 2) "where competing adjudication priorities have prevented the timely completion of cases, even though visas are immediately available."

Also, please describe the "competing adjudication priorities" that "have prevented the timely completion of cases, even though visas are immediately available."

What are the wait times for each visa category in which "competing adjudication priorities have prevented the timely completion of cases, even though visas are immediately available?"

Question: Please provide the number of filed and pending applications for each visa categories that 1) 'cannot now be adjudicated because the number of filings exceeded the number of visas that were actually available, and/or 2) "where competing adjudication priorities have prevented the timely completion of cases, even though visas are immediately available."

Response: There are currently 450,000 employment-based cases awaiting visa..

Question: Also, please describe the "competing adjudication priorities" that "have prevented the timely completion of cases, even though visas are immediately available."

Response: USCIS is managing competing adjudicative priorities by asking field offices to assign their adjudicative resources in a manner that properly balances the naturalization and adjustment of status workloads, but also keeps pace with visa number availability to ensure visa usage. The service centers are processing cases first, according to visa availability, and second, according to date received.

Question#:	2
Topic:	backlog
Hearing:	Hearing on Wasted Visas, Growing Backlogs
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

Question: What are the wait times for each visa category in which "competing adjudication priorities have prevented the timely completion of cases, even though visas are immediately available?"

Response: There are currently no wait times for employment based cases that are being adjudicated timely and made available to the Department of State for assignment of a visa number. Wait times may have slightly increased for some family based petitions. During the last quarter of FY08, more resources from our FY08 enhancement will be dedicated to alleviating this workload.

Question#:	3
Topic:	paper based system
Hearing:	Hearing on Wasted Visas, Growing Backlogs
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

Question: USCIS's processes are antiquated and, in many cases, duplicative. USCIS continues to use a primarily paper-based system. I fear that the outdated system may have contributed to the agency's failure to use all immigrant visas allotted under the law each year. While I understand that USCIS is still plodding toward beginning its transformation program, I'd like to know where that effort is now.

Under your transformation program, when would you expect to implement IT and other business process that will, in fact, streamline your work in a way that will measurably reduce the possibility it will fail to adjudicate sufficient cases to permit it to request the authorized number of family- and employment-based immigrant visa numbers?

When does your current implementation plan anticipate getting to the processes required to adjudicate family- and employment-based immigrant visa cases to the point of requesting a visa number?

Have any modifications been made to the Transformation Plan recently? If so, what changes have been made? Please provide a copy of the most recent plan.

Response: The Integrated Operating Environment that will be delivered through Transformation will enable improved inventory management that will measurably reduce the possibility of not using available visa numbers. The current transformation deployment plan includes all immigrant cases in Increment 2 which is planned for FY10-FY11. While this schedule represents the deployment strategy developed by the USCIS Transformation Program Office, we have allowed vendors who are submitting proposals for the Transformation Solutions Architect Contract the flexibility to propose an alternative deployment strategy that meets the Agency's objectives. No modifications have been made recently to the Transformation Concept of Operations. A copy of the Transformation Concept of Operations is attached.

Question#:	4
Topic:	name check
Hearing:	Hearing on Wasted Visas, Growing Backlogs
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

Questions: The FBI name check process also slows the agency's ability to adjudicate cases and use all allotted under the law each year. I understand that USCIS has worked with the FBI to both work down the FBI name check backlog and to reach a goal of FBI completing name checks in 30 days or less, which is one step in the agency reducing its processing times to 5 months, as promised in last years massive fee increase rule.

What is the current FBI name check backlog?

What steps have USCIS and FBI taken to work down the backlog?

When do you expect to clear all name checks older than 6 months?

When do you expect FBI's name check clearance time will come down to 30 days or less? What effect would that have on the agency's processing times?

Question: What is the current FBI name check backlog?

Response: As of June 24, 2008, USCIS data reflects a total pending count of 191,332 FBI name checks, with 139,722 being older than 6 months.

Question: What steps have USCIS and FBI taken to work down the backlog?

Response: USCIS and the FBI established a series of milestones prioritizing work based on the age of the pending name check. The FBI has advised USCIS that it has eliminated all name check cases pending more than three years, and both agencies continue to work together to reconcile inconsistent data and/or resolve any cases that fall outside of the milestones.

By increasing staff, expanding resources and applying new business processes, the goal is to complete 98 percent of all name checks within 30 days. USCIS and the FBI intend to resolve the remaining two percent, which represent the most difficult name checks and require additional time to complete, within 90 days or less. The goal is to achieve and sustain these processing times by June 2009.

The joint plan will focus on resolving the oldest pending FBI name checks first.
The target milestones for processing name checks are:

Question#:	4
Topic:	name check
Hearing:	Hearing on Wasted Visas, Growing Backlogs
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

- May 31, 2008: Process all name checks pending more than three years.[1]
- Jul 31, 2008: Process all name checks pending more than two years.
- Nov 30, 2008: Process all name checks pending more than one year.
- Feb 28, 2009: Process all name checks pending more than 180 days.
- Jun 30, 2009: Process 98 percent of all name checks within 30 days and process the remaining two percent within 90 days.

Question: When do you expect to clear all name checks older than 6 months?

Response: The goal is to achieve and sustain this processing time by the end of February 2009.

Question: When do you expect FBI's name check clearance time will come down to 30 days or less?

Response: The goal is to achieve and sustain this processing time by the end of June 2009.

Question: What effect would that have on the agency's processing times?

Response: The joint USCIS/FBI Business Plan is one of numerous steps taken to address the efficiency and effectiveness of the FBI background check process. Others include placement of USCIS personnel at the National Name Check Program (NNCP) and at the Terrorist Screening Center (TSC) to facilitate the earliest possible review of cases of concern and to provide enough information for USCIS to complete its adjudications. Another step is the training provided on a recurrent basis by USCIS personnel for FBI contract and government staff regarding the information needed by USCIS adjudicators within letterhead memoranda (LHMs) provided by the FBI when adverse information is developed.

By achieving and sustaining the end goal, USCIS will be able to attain the average cycle time for adjudication of application and petitions.

[1] Preliminary data provided by the FBI indicated attainment of the May 31, 2008 performance goals: (a) completion of cases pending for three or more years and (b) completion of all naturalization cases filed prior to May 2006.

Question#:	5
Topic:	surge response plan
Hearing:	Hearing on Wasted Visas, Growing Backlogs
Primary:	The Honorable Steve King
Committee:	JUDICIARY (HOUSE)

Question: Please describe the "surge response plan" that is mentioned at page 3 of your testimony.

Will the "surge response plan" minimize the number of green card applicants who are given EADs that entitle them to work for many years while their applications are backlogged?

Response: USCIS has extended the Employment Authorization Document (EAD) validity period to two years for those applicants who have filed Form I-765, Application for Employment Authorization and Form I-485, Application to Register Permanent Residence or Adjust Status. Applicants will also be eligible to receive renewal EADs for a two-year validity period if the immigrant visa is not currently available while applicants who have an immigrant visa available will be eligible to receive an EAD for one year.

By providing a longer EAD validity period for those whose visa number is not current, we can focus resources on those adjustment applications that can be adjudicated, and thus reduce the number of outstanding adjustment cases.

Question#:	6
Topic:	green cards
Hearing:	Hearing on Wasted Visas, Growing Backlogs
Primary:	The Honorable Steve King
Committee:	JUDICIARY (HOUSE)

Questions: How many green card applicants now waiting in the gross backlog have been issued EADs permitting them to work, travel, and enjoy most of the other benefits of lawful permanent residence. How many will wait for more than one, three, and five years?

How many in the gross backlog applied in response to the July Visa Bulletin, which stated that all employment-based preference categories were current?

Based on past denial rates, please estimate how many green card applicants now waiting in the gross backlog will ultimately be found ineligible for a green card.

What new steps are being taken to request the needed green card numbers in time for the State Department to make accurate projections of availability so that last summer's Visa Bulletin crisis will not be repeated?

Question: How many green card applicants now waiting in the gross backlog have been issued EADs permitting them to work, travel, and enjoy most of the other benefits of lawful permanent residence. How many will wait for more than one, three, and five years?

Response: The overall backlog for EADs as of May 31, 2008 was zero with an associated gross processing time of 2.1 months. Gross processing time refers to the average length of time that USCIS requires to process an application and render a final decision. A gross processing time of 2.1 months indicates that any green card applicant whose case is part of a backlog will have been issued an EAD.

The length of time an Applicant for Adjustment of status will remain pending is determined by the number of visas available each year across the various immigrant categories. We are unable to determine how many will wait one, three, or five years, due to the regression of visa numbers at this time.

Question: How many in the gross backlog applied in response to the July Visa Bulletin, which stated that all employment-based preference categories were current?

Question#:	6
Topic:	green cards
Hearing:	Hearing on Wasted Visas, Growing Backlogs
Primary:	The Honorable Steve King
Committee:	JUDICIARY (HOUSE)

Response: USCIS received approximately 239,000 Adjustment of Status cases at the Service Centers in July and August 2007. The vast majority of which were employment-based cases that filed in response to the July Visa Bulletin. As of May 31, 2008, there were 373,000 employment-based Adjustment of Status cases pending and 339,000 were gross backlogged. Based on limited visa availability, many of the 239,000 are likely to still be part of the 339, 000 backlog.

Question: Based on past denial rates, please estimate how many green card applicants now waiting in the gross backlog will ultimately be found ineligible for a green card.

Response: Using the 339,000 employment-based cases in the gross backlog as of May 31, 2008, approximately 13.3% or slightly more than 45,000 will be found ineligible for a green card.

Question: What new steps are being taken to request the needed green card numbers in time for the State Department to make accurate projections of availability so that last summer's Visa Bulletin crisis will not be repeated?

Response: This fiscal year, USCIS is closely monitoring numbers needed for allocation and working cooperatively with DOS to develop suitable priority dates for the visa bulletin. The March 2008 Visa Bulletin was the first printing of this combined collaboration between USCIS and DOS.

USCIS has dedicated resources specifically for managing the visa number program. A USCIS program manager works directly with the DOS Visa Bulletin Chief and the service centers to compare service center inventory with the availability of visa numbers; coordinate number distribution; monitor numbers daily; and, provide regular updates to USCIS, DHS and DOS management.

This collaborative effort between USCIS and DOS resulted in USCIS reaching the target of 82% of its allocation by the end of the third quarter this fiscal year.

U.S. Citizenship and Immigration Services

USCIS TRANSFORMATION PROGRAM

CONCEPT OF OPERATIONS

March 28, 2007

Version 1.5

EXECUTIVE SUMMARY

Introduction

The challenge of fulfilling the Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) mission is derived from a workload that is both large and diverse. As the agency through which foreign nationals are processed towards immigration benefits in the United States, USCIS should serve as a model of transparent, fair, efficient and secure processing.

More than 7.5 million applications and petitions are received per year, comprised of over 50 types of immigration benefits. USCIS recognizes, furthermore, that its dependence on paper files makes it difficult to efficiently process immigration benefits, verify identity of applicants, and provide other government agencies the information required to quickly identify criminals and possible terrorists.

The purpose of this Concept of Operations is to describe both the current business environment and the future processes that will serve as the foundation for the way USCIS manages customer information and adjudicates benefits requests. This document should be used as a window through which to view how business, information and technology solutions will interact with, support, and enhance USCIS's mission. As such, it is a tool for creating a common agency vision of its future operational environment.

USCIS Transformation Program

USCIS is embarking on an enterprise-wide Transformation Program that will transition the agency from a fragmented, paper-based, operational environment to a centralized and consolidated environment, utilizing state of the art case management tools and a paperless adjudication process. The Program is a large-scale, complex undertaking that will form the foundation of USCIS-wide business processes and Information Technology (IT) enabled re-engineering. The new operational environment will employ the types of online customer accounts used in the private sector in order to facilitate transactions, track activities, and reduce identity fraud. The revised processes will also help the agency to meet customer expectations for on-demand information and immediate real-time electronic service over the Internet.

The Transformation Program Office (TPO) is charged with the development of a flexible and efficient organization supported by an integrated technical environment for both its customers and employees. The TPO will provide a centralized management structure to oversee all transformation activities within USCIS, including the coordination of several initiatives converting the current mix of legacy infrastructure and paper-based business processes to electronic-based business processes.

The objectives and long term benefits of the Transformation are:

- *National Security and Integrity*: USCIS will ensure the integrity of the immigration system and help to safeguard the country by effectively collecting, analyzing and sharing information used to verify identity, eligibility, and status of individuals seeking to become citizens of the U.S. or study, live, or work in this country. A responsible and transparent approach toward the handling of such

personal information will protect the rights of individuals and organizations interacting with USCIS and thereby foster their trust and cooperation with the agency.

- *Customer Service*: USCIS will deliver world-class customer service by adjudicating requests for benefits accurately and within acceptable timeframes, by providing timely and accurate information about immigration benefits and the status of customer requests, and by promoting civic values
- *Operational Efficiency*: USCIS will be an innovative, flexible, and accountable organization that invests in its people and infrastructure to ensure cost-effective and consistent results.

Proposed Operational Concept

The proposed operational concept will transform the USCIS business approach to a "person-centric" model based on customer accounts. The approach will enable applicants and petitioners and others interacting with USCIS to become "account holders," engaging in transactions with the agency, rather than merely submitting applications and petitions.[1] To improve customer identification, the proposed operational concept is proposing to use biometrics for applicants, petitioners, and household members over the age of 14. All information related to an individual, including a history of all transactins with the agency, will be linked in a single account and available through the system, thereby creating the transformed end-to-end adjudicative process.

USCIS plans to streamline all adjudication related activities into an integrated operational concept. This operational concept should standardize processes across USCIS operations in relation to case intake, biometrics, background checks, adjudication, scheduling, and notifications. The Transformation Program will affect most aspects of USCIS operations and technology. USCIS operations will be transformed from a paper based process to an electronic environment,[2] making it possible to incorporate more effective processing of low risk applicants and better identification of higher risk individuals. The successful implementation of the proposed operational concept will improve customer service, enhance national security, and assist USCIS in achieving operational excellence.

[1] In discussing the proposed operational model, this document uses the term transaction to refer to the interaction between customers who seek benefits and USCIS. The term transactions can also refer to actions on accounts involving other U.S. immigration agencies, such as visa applications to consulates, port entries with CBP, and enforcement actions by ICE.

[2] All account and transaction data are subject to verification by USCIS prior to processing, in accordance with regulatory requirements.

U.S. Citizenship and Immigration Services

APPROVAL PAGE

Approved by: _____

Jonathan Scharfen Date
Deputy Director, USCIS

_____

Daniel Renaud Date
Chief, USCIS Transformation Program

U.S. Citizenship and Immigration Services

REVISION HISTORY

Version	Date	Author	Summary of Changes
0.1	07/14/06	Transformation Program Office	Initial Draft
0.2	08/02/06	Transformation Program Office	Revisions based internal comments
0.3	09/14/06	Transformation Program Office	Revisions based on comments from USCIS Management and DHS:ITAC
1.0	09/29/06	Transformation Program Office	Revisions based on comments from USCIS Field Offices
1.1	10/11/06	Transformation Program Office	Updated Figure 3-1 and stylistic edits.
1.2	11/22/06	Transformation Program Office	Corrections to approval page
1.3	12/14/06	Transformation Program Office	Updates based on feedback from TLT, and reflection of October, 2006, USCIS Reorganization
1.4	01/08/07	Transformation Program Office	Updates reflect staffing changes in TPO.
1.5	03/28/07	Transformation Program Office	Updates to reflect results of Transformation Program Business Process Alternatives Analysis.

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1 INTRODUCTION

The challenge of fulfilling the Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) mission is derived from a workload that is both large and diverse. As the agency through which foreign nationals are processed toward immigration benefits in the United States, USCIS should serve as a model of transparent fair, efficient, and secure processing.

More than 7.5 million applications are received per year, comprised of over 50 types of immigration benefits. USCIS recognizes that its dependence on paper files makes it difficult to efficiently process immigration benefits, verify identity of applicants, and provide other government agencies the information required to quickly identify criminals and possible terrorists.

To address these concerns, USCIS is embarking on an enterprise-wide Transformation Program that will transition the agency from a fragmented, paper-based filing operational environment to a centralized, consolidated environment, utilizing state of the art case management tools and paperless adjudication process. The Program is a large-scale, complex undertaking that will form the foundation of USCIS-wide business processes and Information Technology (IT) enabled re-engineering. The new operational environment will employ the types of online accounts used in the private sector to facilitate customer friendly transactions, track activities, and reduce identity fraud.

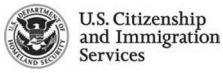
Changes to immigration policy and practices occur frequently, whether through congressional addition or modification of visa categories, through new background checks or biometric technologies, through substituted or alternative services such as enrollment processing, through data sharing opportunities with sister and law enforcement agencies, or through administrative performance improvement goals. As a result, new USCIS processes will require inherent flexibility. New opportunities to partner with the private sector and to share data and services with other federal agencies will be designed to accommodate additional and alternative means of service delivery. Additionally, USCIS systems should also be able to access available government and private databases to verify information related to eligibility for an immigration benefit.

1.1 Purpose of this Document

The purpose of this Concept of Operations (ConOps) is to describe both the current business environment and the future processes that will serve as the foundation for the way USCIS manages customer information and adjudicates benefits requests. This document should be used as a window by which to view how business, information, and technology solutions will interact with, support, and enhance USCIS's mission. As such, it is a tool for creating a common agency vision of its future operational environment.

1.2 Recommendations for Change

While USCIS has long recognized the need to significantly improve the management of customer data, the DHS "Second Stage Review" highlighted the agency's requirement to expeditiously continue its efforts to ensure that national security and customer service



vulnerabilities are fully addressed. The Government Accountability Office (GAO) has expressed similar concerns, such as the processing of customer benefits and the agency's ability to report on processing time or quality assurance around adjudicative decisions.[3] Listed below are USCIS's solutions to these concerns:

- Establish a person-centric, account-based, biometrically supported process that provides a higher level of service to all applicants, presents all data regarding a person's immigration status and history within a single system; ensures that security checks are completed before any benefits request is adjudicated; and shares data and operations with other agencies.
- Use modern, web-based tools to create a comprehensive paperless filing and adjudication system that integrates information used for adjudication and analysis and thereby improves decision integrity and provides enhanced datasharing capabilities with other federal agencies.
- Develop a performance measurement system (define, evaluate, and select appropriate indicators) that identifies the relevant outcomes and other performance criteria to be addressed.
- Upgrade the current hardware, business application, and desktop infrastructure at a reasonable cost.

Such changes have also been advocated by the DHS Office of the Ombudsman.[4] In several reports to Congress, the Ombudsman has advocated for a more "person centric" process, standardized form packages, more comprehensive e-filing, and the elimination of geographic boundaries which restrict the ability of the applicant to seek the most efficient service.[5]

[3] See, GAO Report 00-185, 01-488, 03-883, 04-309R, 05-813, 06-20, 06-100, 06-133.
[4] The function of this office is to: 1) to assist individuals and employers in resolving problems with USCIS; 2) identify areas in which individuals and employers have problems in dealing with USCIS; and 3) to the extent possible, propose changes in the administrative practices of USCIS to mitigate problems identified under paragraph (2). [Homeland Security Act - Section 452 - Citizenship and Immigration Services Ombudsman]
[5] See, Citizenship and Immigration Services Ombudsman Annual Report 2004 - 2006.

U.S. Citizenship and Immigration Services

2 USCIS TRANSFORMATION PROGRAM

USCIS recognizes that its reliance on a paper intensive, forms-centric way of doing business makes it difficult to efficiently process immigration benefits, combat identity fraud, and provide other government agencies the information required to quickly identify criminals and possible terrorists. To address these concerns, USCIS has created a Transformation Program Office (TPO) to modernize the way it does business. The TPO is part of a broader USCIS Transformation effort that is being led by the agency's senior management (see Figure 2-1).

Figure 2-1: Transforming USCIS

This document is limited to a discussion of the transformation of the USCIS business operations.

The TPO is charged with the development of a flexible and efficient organization supported by an integrated technical environment for both its customers and employees. The TPO will provide a centralized management structure to oversee all transformation initiatives within USCIS including the coordination of several initiatives around converting the current mix of legacy infrastructure and paper-based business processes to electronic-based business processes. Technologies employed will increase capabilities, streamline processes, and support the collection of customer generated service fees.

2.1 Transformation Mission

The Mission of the USCIS Transformation is to "deliver a new business identity, fresh tools and dependable information to enable the agency's representatives as confident and proud stewards of America's promise."[6] As illustrated below (see Figure 2-2), the USCIS goals for the Transformation program address three major, partially overlapping functional areas:

- *National Security and Integrity* –
  - USCIS will create a immigration benefits system that is efficient, consistent, accurate and trusted and will help to safeguard the nation by ensuring that ineligible individuals are not granted immigration or citizenship benefits. The responsible and transparent approach toward the handling of personal information will protect the rights of individuals and organizations interacting with USCIS and thereby foster their trust and cooperation with the agency.
- *Customer Service* –
  - USCIS will deliver world-class customer service by adjudicating requests for benefits accurately and within acceptable timeframes, by providing timely and accurate information about citizenship and immigration benefits and the status of customer requests, and by promoting civic values.
- *Operational Efficiency* –
  - USCIS will be an innovative, flexible, and accountable organization that invests in its people and infrastructure to ensure cost-effective and consistent results.

Figure 2-2: USCIS Transformation Goals

Transformation will affect most aspects of USCIS operations and technical systems. USCIS operations will be transformed from a paper based process to an electronic environment, making it possible to incorporate more effective processing of low risk

[6] USCIS Transformation Program Strategic Plan – Business Vision, September 2006, p. 5, Draft.

applicants and better identification of higher risk individuals. Transformation will ensure an applicant's unique identity is known through use of DHS biometrics and enumeration strategies which will "lock in" a person's identity. Ensuring the validation of applicant identity will enhance national security, help to reduce fraud, and reduce the collection of duplicative information. Other benefits of the USCIS Transformation include the ability to:

- create customer accounts to provide the foundation of a person-centric view of information;
- ensure a complete and easily accessible set of records;
- provide customers with on-demand information and the ability to update their records;
- access customer data through a single and extensible technology base used across the agency;
- make informed and timely benefits decisions based on a person-centric view of information;
- improve the efficiency of analysis, decision making, and reporting,
- communicate effectively within USCIS and to the agency's customers;
- potentially reduce Freedom of Information Act (FOIA) requests for agency documents;
- collect and share reliable data across federal agencies;
- enhance the ability to formulate sound policy recommendations; and
- prevent future backlogs through efficient case management and workload tracking.

2.2 Assumptions and Constraints

The TPO is responsible for defining the mission, business, security, and functional requirements for the system and the system design, development, and deployment respectively. The Assumptions and Constraints listed below, to some degree affect the ability of the TPO to implement the proposed operational concept. In the event that the assumptions cannot be met, the proposed operational concept may need to be revised.

2.2.1 Assumptions

Assumptions are defined as future situations beyond the control of the TPO, whose outcomes affect the development and operation of the new or modified system. The TPO has identified the following assumptions:

A. Congress will continue to support the agency in its transformation efforts.

B. Temporary Worker Program (TWP) legislation will pass within two years. The system is being designed to accommodate a TWP as another product line whose functions will be in keeping with the components of other processes.

C. Statutory, regulatory, and procedural changes will continually be made to immigration benefits, such as changes being made for orphans, religious workers, and naturalization applicants, and new categories for trafficking victims.

D. DHS will impose standards for enumeration and support for biometric verification under the Unique Identity Initiative.

E. USCIS will have the network capacity and technology infrastructure to deploy a publicly accessible web-centric environment.

F. USCIS will complete a web portal project, including a module by which an online customer can be directed to the appropriate customer transaction type. Once the customer has selected a transaction type, the Transformation web tools will take the customer through the remaining process.

G. Private entities are willing to make a business of facilitating USCIS customer account set-up and application intake, including the capture of customer electronic data, images and payment for upload to agency systems using publicized USCIS standards.

H. Services for the capture of biometrics, for the background checks, and for production and delivery of secure identity documents will be provided by components of USCIS, whether directly, through contract, or through privatized arrangements. The new operational concept must accommodate existing and expanded privatized delivery systems for such services and must ensure that background checks and biometric enrollment are secure through validation and government involvement.

I. Partner agencies will be able to access USCIS customer account data using web enabled tools as needed.

2.2.2 Constraints

Constraints are defined as impositions on the future operational concept, because of conditions beyond the control of the Transformation Program. The TPO has identified the following constraints:

A. Government regulations relating to the submission of information, Systems of Records Notice, Privacy Act, and Paperwork Reduction Act.

B. Funding levels to support incremental development and deployment.

C. Implementation of IT infrastructure upgrade and enhancements within USCIS.

D. The volume of potential beneficiaries under the TWP may require new channels of enrollment ranging from expansion of Application Support Centers, to the addition of privatized enrollment options or some combination.

E. The solution must be able to interface with both internal and external systems.

- USCIS legacy systems, including[7]:
  - Computer Linked Application Information Management System 3 (CLAIMS 3)
  - Computer Linked Application Information Management System 4 (CLAIMS 4)
  - Central Index System (CIS)
  - Reengineered Naturalization Application Casework System (RNACS)
  - Service Request Management Tool (SRMT)
  - Fraud Detection National Security (FDNS)
  - Marriage Fraud Amendment System (MFAS)
  - Refugee Asylum Patrol System (RAPS)
  - Deportable Alien Control System (DACS)
  - Freedom of Information Processing System (FIPS)
  - Verification Information System (VIS)
- DHS systems, including:
  - Treasury Enforcement Computer System (TECS)
  - Interagency Border Inspection System (IBIS)
  - Student and Exchange Visitor Information System (SEVIS)
  - Treasury Enforcement Computer System (TECS)
- Partner Agency systems (DOJ, DOS, DOL, etc.)

[7] As part of the Modernization Program, some of the USCIS systems identified are scheduled for decommissioning and data in these systems may be accessed through other means.

3 OVERVIEW OF USCIS

3.1 USCIS Benefits and Workload

The DHS USCIS,[8] implements U.S. immigration policy through the processing and adjudication of immigrant and non-immigrant benefits, including:

- *Family-based petitions* - facilitating the process for close relatives to immigrate, gain permanent residency, work, etc.;
- *Employment-based petitions* - facilitating the process for current and prospective employees to immigrate or stay in the U.S. temporarily;
- *Asylum and Refugee applications* - adjudicating asylum and the processing of refugees;
- *Naturalization* - approving citizenship of eligible persons who wish to become U.S. citizens;
- *Special status programs* - adjudicating eligibility for U.S. immigration status as a form of humanitarian aid to foreign nationals; and,
- *Document issuance and renewal* - including verifying eligibility, producing and issuing immigration documents.

USCIS consists of approximately 15,000 employees and contractor personnel located in over 250 offices worldwide, including three international District Offices overseeing 28 Field-Offices around the globe. Domestically, USCIS is comprised of four Service Centers, a National Benefits Center (NBC)[9], a National Records Center (NRC), four Regional Offices, located in Burlington, VT (Northeast Region), Dallas, TX (Central Region), Laguna Niguel, CA (Western Region), and Orlando, FL (Southeast Region), and 73 Field Offices organized in 26 Districts, and 8 Asylum Offices, reporting directly to USCIS Headquarters.[10] Additionally, there are 115 contractor operated Application Support Centers (ASC), and the National Customer Service Call Center (NCSC).

[8] USCIS was established within DHS on March 1, 2003.
[9] The NBC has all the functions of a Service Center but reports to Field Operations. Based on functionality, the NBC has been referenced as a Service Center throughout the rest of the document.
[10] In Fiscal Year (FY) 2005, USCIS completed approximately 7.5 million benefit applications and received 6.3 million more.

3.2 Service Centers

The four USCIS Service Centers oversee the initial intake of the majority of applications/petitions and and for the adjudication of immigration applications/petitions that do not require face-to-face interviews. The Service Centers are located in Laguna Niguel, CA (CSC), Lincoln, NE (NSC), St. Albans, VT (VSC), and Dallas, TX (TSC), and report directly to the Service Center Operations Division at USCIS Headquarters.

The Service Centers are responsible for approximately 4.7 million adjudications per year. It is a common practice to divide the workload into "product lines" based upon the benefit type:

- non-immigrant status
- temporary employment
- family-based immigration petitions
- employment-based immigrant petitions, and
- benefits documentation (e.g., employment authorization documents, replacement cards, travel documents, etc.).

While Service Centers adjudicate the majority of applications and petitions, cases requiring interviews are forwarded to the responsible Field Office, while all Asylum applications are forwarded to an Asylum office.

3.3 Lockboxes

While the majority of applications are submitted to a Service Center, over 3 million applications are processed at a lockbox annually and over 250 million dollars collected each year. [11]

The lockbox process provides a mechanism to electronically capture information (e.g., creating images from paper applications, collecting data from petitions and supporting documents), while systematically running a set of business rules against the applications to determine if they are filled out properly and the correct fees submitted. Additionally, some

[11] Lockboxes are operated by the U.S. Department of Treasury and are located in Chicago and Los Angeles. Applications/benefits fees receipted at the lockbox are: Application to Replace Alien Registration Card, Application for, Replacement/Initial Nonimmigrant Arrival/Departure Record, Petition for Alien Fiancé (e), Petition for Alien Relative, Application for Travel Document, and Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal, Notice of Appeal to the Administrative Appeals Unit (AAU), Petition for Amerasian, Widow(er), or Special Immigrant, Application to Register Permanent Residence or to Adjust Status, Supplement A to Form I-485, Application to Register Permanent Residence, Application To Extend/Change Nonimmigrant Status, and supplement, Application for Waiver of Grounds of Excludability, Application for Waiver of the Foreign Residence Requirement, Application for Status as a Temporary Resident, Application for Waiver of Excludability, Medical Examination of Aliens Seeking Adjustment of Status, Application for Employment Authorization, Application for Family Unity Benefits, Application for Temporary Protective Status. Application for Action on an Approved Application or Petition, Affidavit of Support, Sponsor's Notice of Change of Address, Motion to Reopen Before the Commissioner, Multi Beneficiary, Notice of Entry of Appearance as Attorney or Representative, and Notice of Appeal to BIA of Decision of District Director.

applications are also electronically filed, in which case the data is transmitted directly to a Service Center.[12]

Application packages received at the lockbox are fully scanned, including any supporting documentation, and bar codes, receipt notices and rejection notices for applicants are generated, and any fees deposited to USCIS via the Treasury.[13]. The lockbox then forwards the data captured during scanning to the USCIS CLAIMS 3 database system for use at a Service Center, which also receives the paperwork itself.[14]

Cases that are filed prematurely are prepared for manual rejection at receipt.[15] At the Service Center, cases lacking proper signature or those without the correct fee are also identified for rejection. Both properly filed cases and cases marked for rejection are forwarded for data entry, at which point information is entered into the USCIS computer system and fees are forwarded to a U.S. Department of Treasury designated bank for deposit into the Treasury General Account, or in some cases forwarded to a Treasury designated lockbox facility operated by a commercial bank.

3.4 Field Offices

While the majority of adjudications can be completed in the Servcice Centers, the 73 USCIS Field Offices are responsible for the adjudication particularly of those applications requiring face-to-face interviews, such as requests citizenship (approximately 750,000 per year). They also process some applications and petitions, such as international adoptions and permanent residency, that do not require interviews. However, these applicants may also be interviewed, at the discretion of the adjudicating officer.

3.5 Application Service Centers

While the adjudication of benefit applications is performed at the USCIS Service Centers and Field Offices, applicants for the majority of benefits are required to provide fingerprints for the performance of security checks. The capture of applicant biometrics is performed at one of the 115 Application Support Centers. In FY-05 the ASCs processed 2,254,508 10-prints and 1,472,928 photos, press-prints, signatures (I-89s or card collection data form). Many of the I-89 customers were also 10-print customers, in which approximately 2.6 million customers were processed.

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[12] Applications/benefits e-filed directly to a lockbox are as follows: Application to Replace Alien Registration Card, Petition for a Non Immigrant Worker, includes supplements, Non Immigrant Petition based on a Blanket L Petition, Petition for Non Immigrant Worker filing fee exemption, Application for Travel Document, Immigrant Petition for Alien Worker, Application To Extend/Change Nonimmigrant Status, and supplement, Application for Employment Authorization, Application for Temporary Protective Status, Request for Premium Processing Service, Notice of Entry of Appearance as Attorney or Representative.

[13] Currently, the images collected are being stored and may potentially be of use for future USCIS access in relation to electronic adjudications and/or other customer service purposes.

[14] See section 4.2.4., for a more detailed explanation of this process.

[15] Premature filings are those received before the applicant is eligible or meets the legal criteria to receive a benefit.

3.6 International Operations, Refugees, and Asylum

International District Offices accept certain applications and petitions, provide information and forms to the public, and work closely with the U.S. Department of State (DOS) in various aspects of the visa-issuing process. In addition, they maintain close liaison with agencies of the countries in which they are located, and provide assistance to domestic USCIS offices relating to foreign laws and documents. International Offices also have adjudicative, logistical, and managerial roles in the U.S. Refugee Resettlement Program. They typically adjudicate relative petitions, Refugee/Asylee derivative and relative petitions, military naturalization, immigrant and non-immigrant waivers, and orphan petitions.

USCIS is responsible for determining whether overseas refugee applicants are eligible for resettlement in the U.S.[16] The agency has a dedicated corps of Refugee officers, who are located in Washington D.C. and travel to overseas locations to conduct interviews of applicants for resettlement to the U.S. While USCIS interviews applicants overseas, DOS is the responsible agent for overall coordination and processing of refugees applications.

The Asylum Division applies asylum laws to applicants already in the U.S. The process permits both legal and illegal immigrants in the U.S. who are not in immigration proceedings to apply for asylum if they are unable or unwilling to return to their country of origin due to past persecution or a well-founded fear of persecution. In addition to adjudicating petitions, Asylum officers also conduct credible and reasonable fear interviews, adjudicate applications for benefits under Section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA) and assist in refugee processing overseas. Applicants who are not approved for asylum and are not in legal status are issued a Notice to Appear (NTA) before an immigration court judge for determination of final removal orders from the U.S.

3.7 Customer Service Division

The NCSC provides tier one assistance to USCIS customers. The NCSC consists of a combination of six government and contract operated call centers, that provide both automated and "in person" toll-free phone services. Using scripted information to answer questions and provide services, customer service representatives screen questions about case status and take "referrals" for field offices, who then research cases and respond directly to customer inquiries. Centers also take orders for immigration forms and schedule a limited range of appointments. In FY 2005 the NCSC received approximately 20 million calls, averaging roughly 385,000 per week.[17]

[16] An annual refugee admissions ceiling is established by the President, in consultation with the Congress. For FY 2005, the Presidential Determination established an admissions ceiling of 70,000.
[17] Additionally, there are approximately 1,000 information officers who are stationed at field offices throughout the United States.

U.S. Citizenship and Immigration Services

4 Description of the Current Business Process

4.1 Overview

Depicted below (see Figure 4-1), the core USCIS business process involves the adjudication and processing of an immigrant and non-immigrant benefit.[18] While USCIS offers a multitude of benefit types, and there is some variance in how each benefit is adjudicated, the process generally involves the following three major components:

- **Apply**: USCIS is the responsible agent, on behalf of the U.S. to: 1) ensure immigration benefit types are publized to the general public, 2) provide mechanisms to apply for these benefits, and 3) receipt such applications.
- **Adjudicate**: USCIS is responsible for the adjudication of each benefit application. The majority of granted benefits and services do no not require face to face interviews and are processed at USCIS Service Centers.
- **Issue**: USCIS is responsible for issuing a decision, granting immigration status, denying benefits or referring customers to other government entities (e.g., immigration court, etc.). The agency is also responsible for sending documents to customers, such as a denial letters, lawful permanent resident cards and certificates of citizenship.

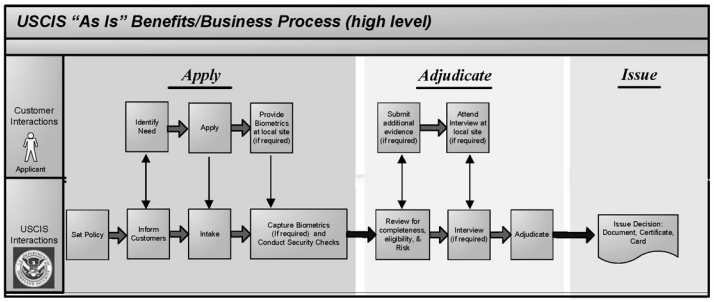

Figure 4-1: USCIS "As Is" Benefits/Business Process

The following descriptions apply to the prevalent agency practices for each of the process steps, with the understanding that there are some variations from office to office. Also,

[18] This is a high level representation and does not include Appeals or Removal Processes.

certain programs, such as asylum and refugee processing, follow substantially different procedures. Consequently, the descriptions in the following sections may not apply.

4.2 Apply

4.2.1 Set Policy

USCIS is responsible for the preparation of regulations and policy directives to ensure that the agency uniformly and consistently interprets and applies legislation as it relates to the adjudication of applications/petitions for immigration benefits. The agency must ensure that other government entities, stakeholders, and customers receive timely and accurate information regarding its regulations and policy decisions. USCIS communicates regulations and policy directives internally through memorandums posted in daily emails and posted to the USCIS internal website. Externally, policy changes are published through the Federal Register, media notices, and postings to the USCIS public website.

USCIS is the primary producer of information on immigration to the U.S. and through external Federal interagency sources enhances data collection and information sharing to develop reliable and valid data on which to formulate policy analyses and subsequently policy development.

4.2.2 Inform Customer

USCIS provides information through its website, the national call center, district offices, press releases, and outreach activities.[19] Information provided relates to application status, eligibility for immigration benefits, immigration law, policies, and local policies and procedures.

The USCIS website contains extensive information relating to immigration law, policy and procedures, forms, and local office information. It also has a portal to the USCIS InfoPass system where customers can self-schedule appointments to see an Immigration Information Officer at a field office. The website also offers limited case status information on applications filed at Service Centers.

For other inquiries or more detailed explanations, customers are advised to call the NCSC. Case related inquiries received outside of normal processing times are manually entered into the Service Request Management Tool (SRMT), a stand-alone system that routes the requested information to a field office or a Service Center where an information officer can draw down inquiries for resolution.

[19] http://www.uscis.gov/

Additionally, information officers are assigned to Field Offices and Service Centers to assist customers with immigration benefit or case status inquiries. These officers also assist customers with "emergency" issues relating to employment and travel authorization. [20]

Failure to manage changes to a customer's address represents at least 10 percent of USCIS case inquiries. Lacking a unique account for each customer to capture information, USCIS must require customers to notify the agency of an address change separately for each pending case.[21] Historically, address change correspondence has not always been successfully routed to corresponding case files. To help address this problem, SRMT is also being used to input customer changes of address that need to be placed into individual case files or other systems. In the naturalization system, which is a centralized database, address changes are taken by phone and manually keyed into the case management system.[22] Aliens, including lawful permanent residents, are required to notify DHS of changes to their address within 10 days of relocating. This is done through a change of address form, from which data is entered into a stand alone database that must be queried whenever a customer mailing is returned as undeliverable.[23]

Inquiries on problem cases come to agency's attention through a multitude of avenues. USCIS's inability to digitize the majority of customer applications and supporting documentation, as well as the lack of national access to a central database, greatly impede employees from responding efficiently to such inquires. Frustrated with the agency's response to a case, some customers attempt to resolve their concern through congressional offices, attorneys, ombudsman liaisons, and the media. This can result in duplicative resources dedicated to the same inquiry.

4.2.3 Intake

Applications for immigration benefits start with the customer. Customers identify information related to a particular benefit by accessing information on the USCIS website, appearing in person at district offices, or by contacting outside attorneys or accredited representatives. Currently, USCIS customers apply for benefits using paper forms that can be downloaded from the agency website or ordered from USCIS by telephone or mail.

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[20] At times, USCIS is unable to quickly resolve customer issues since pertinent information is located in a paper file which is not immediately accessible or because certain applications and petitions are not tracked electronically to facilitate same day resolution.

[21] For example, if a customer has a pending asylum application, adjustment application, work card application, and travel document application and moves, he/she must send a separate notification of change of address to each office (or even separate notifications to the same office) handling each application, separate of each case. In practice this information should be inputted into an agency system - CLAIMS3 or, if it's in the local office, the letter indicating an address change should be placed into the customer file so that any new mailings to the client are received at the most current address. Because of the lack of consistency in the availability of systems across the agency, updates are handled in different ways depending on location.

[22] USCIS is preparing an online change of address system which will feed into the same inquiry system fed by call centers.

[23] The upcoming online change of address system will allow customers to complete the change of address form (form AR-11) online.

Applications are considered filed when accompanied by the required fee and signed by the appropriate person.

Outside of a limited number of benefits which can be e-filed to USCIS, the majority of immigration applications and petitions are paper based and typically mailed to a Service Center or lockbox.[24] Because e-filed data is not integrated into the rest of the adjudication process, and because supporting paper documents must be submitted separately and matched up with printed e-filed data, USCIS is not able to deliver better service to e-filing customers. Furthermore, USCIS still prints out a hard copy of all electronically filed applications, resulting in additional processing costs for paper, ink, printers, etc. Thus even e-filed applications result in hard copy records which have to be matched to the respective receipt or Administrative file (A-File).

For the overwhelming majority of filings, which are made by paper, USCIS uses several intake methods that are determined by the type of application and the "jurisdiction" in which an applicant resides.[25] It is the responsibility of the customer to ascertain whether an application should be filed by mail to a particular field office, service center, or lockbox.[26] Applications submitted to incorrect locations are either forwarded to the appropriate office or rejected and returned to the customer with instructions on where to resubmit the paperwork. In general, submitted paperwork consists of both the government supplied application form and a variety of supporting documents, such as a birth certificate.

Additionally, significant variation exists among USCIS field sites regarding the submission of application fees. While electronic filings currently require credit card payment or the electronic transfer of funds from a checking or savings accounts, USCIS offices and the lockbox also accept checks and money orders. Field offices do not have an electronic system to record fees and therefore issue "cash register" style receipts. In contrast, applications filed electronically to Service Centers through the lockbox are linked to an automated system that generates receipts and tracking numbers.

Limited data is entered into USCIS systems about a case, and data entry errors can be frequent and difficult to identify and correct. While a small percentage of cases are subject to imaging by a lockbox, those images are not generally viewable by Adjudications Officers for lack of a document management repository and engine for display. Thus, all cases are managed through the movement of paper files within and between USCIS facilities.

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[24] For a list of applications and petitions that can be e-filed, see the U.S. Citizen and Immigration Services Website, *Introduction to E-filing* (http://www.uscis.gov/graphics/formsfee/forms/efiling.htm). Additionally, some applications such as petitioning for advance processing of an orphan (I-600A) can be submitted directly to a local field office.

[25] A "jurisdiction" is typically determined by an applicant's home residence.

[26] The majority of applications and petitions are mailed by customers to a Service Center. Currently, the Treasury lockboxes receive over 3 million applications annually, electronically scans the entire applicant package (including supporting documentation) and forwards the paper application to the NBC.

4.2.4 Biometrics, Fees, and Background Checks

USCIS only requires full biometrics (i.e., fingerprints, photograph and signature) for certain types of applications.[27] When required by the agency, applicants submit fingerprints at a local ASC. Although ASCs fingerprint over 2 million applicants per year, USCIS does not have the capability to retrieve or store biometrics outside of the specific instance in which an applicant applied for a benefit. As a result, fingerprints can not be automatically cross-checked electronically against future applications filed. Fingerprint data submitted by an individual are stored by US-VISIT; USCIS currently has no means to retrieve that data systematically for future use.[28]

In order to schedule appointments for biometric data capture and interviews, information is extracted from CLAIMS and sent to the Scheduling Notification for Applicant Processing System (SNAP), a fingerprint scheduling program. Additionally, an appointment is automatically scheduled for fingerprinting at a local ASC and an appointment notice created and sent to the applicant.

Biometric data received from the ASCs are also used to generate the Federal Bureau of Investigations (FBI) fingerprint check. The results of the fingerprint check are placed in the file with the corresponding application. In cases where the fingerprint results in an "Ident", the encounter history (including any rap sheet information) is printed directly from the Benefits Biometric Support System (BBSS). [29]

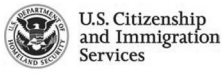
A combination of automated and manual methods is used by USCIS to conduct background checks on applicants. These checks include name checks conducted by the Interagency Border Information System (IBIS), [30] as well as fingerprint and name checks conducted by

[27] While all applications require a signature, in general only applications for permanent residency, naturalization, asylum and adoption of orphans require full biometrics. More recently, the agency has also begun to verify customer identity using biometrics for the renewal of lawful permanent resident cards. Since April 2003 USCIS has been collecting and storing electronic images of 10-prints. The 10-prints are on tapes and shared with US-VISIT. In the Image Storage and Retrieval System (ISRS), legacy INS kept press-prints, photos, and signatures that were used to make Permanent Resident Cards and Employment Authorization Documents at ICPS (and previously at the Texas card facility) since 1978. USCIS has been developing a Biometrics Storage System (BSS) designed to facilitate retrieval and re-use of such biometrics.

[28] The images for these biometrics, including previous stores of electronically acquired biometrics, are being loaded into the biometrics data stores of US-VISIT IDENT, where they are being compared at the time of loading with images already in IDENT.

[29] BBSS is a USCIS System that stores fingerprint images and biographic data, and can submit fingerprint check requests to the FBI.

[30] IBIS is managed by CBP and is a database of name-based lookouts, wants, warrants, arrests, and convictions consolidated from over 20 agencies. A complete IBIS query also includes a concurrent check of selected files in the FBI Criminal Justice Information Services (CJIS) Division Integrated Automated Fingerprint Identification System (IAFIS). USCIS began conducting automated, name-based queries of IBIS for all USCIS applications in 2002. With an average of 3.7 names per application to check, USCIS conducted over 27 million IBIS checks in FY 2004. Source: Office of Inspector General (Nov, 2005), *A Review of U.S. Citizenship and Immigration Services Alien Security Checks* (DHS-OIG Report No. 06-06).



the FBI.[31] Additionally, the Asylum program uses an automated fingerprint identification system, the Automated Biometric Identification System (IDENT), for all asylum applicants.[32]

Prior to conducting the background checks, USCIS collects the applicable fees. Service Centers and lockboxes are responsible for collecting such fees, and entering receipts and other data into automated systems for a majority of applications and petitions. When an application is received, the information is keyed into CLAIMS 4, if it refers to naturalization or CLAIMS 3 for all other applications.[33] Once the information is entered into either system, the FBI name check is conducted through a separate transmission of the information to the FBI.

Once the information is entered into either system, an IBIS check is automatically conducted through an interface with a different database. Field offices do not have access to this database and therefore run IBIS checks manually, using the Treasury Enforcement Computer System (TECS).[34] Background check results are readily visible within either system when the Adjudications Officer is processing the case. While the system automatically returns IBIS security check information, it does not notify USCIS when the check is completed.

Although the results of these checks are automatically retrieved through the system, the FBI checks require Adjudications Officers to retrieve the data from a separate database. However, name checks which result in negative information on the applicant or beneficiary (commonly referred to as a "positive hit") do have a notification vehicle and are immediately referred to specialized teams for further investigation or action.

When the application is transferred from one USCIS facility to another, FBI fingerprint Rap sheets are sometimes not received before shipment. If a fingerprint check expires before USCIS completes the adjudication, the applicant must have another set of fingerprints taken

[31] The FBI's IAFIS matches criminal history records from federal, military, and most state apprehensions. USCIS collects and electronically submits applicants' fingerprints for selected benefits (i.e., naturalization, permanent residence, and asylum). IAFIS has been in place since 1999. Before that time, the Immigration and Naturalization Service (INS) manually submitted fingerprint cards for criminal history records checks. USCIS submitted 1.9 million fingerprints at a cost of $31.9 million in FY 2004. The FBI Name Check is partially automated and searches over 86 million files documenting people who are the main subject or referenced in an FBI investigation. The legacy INS queried the main files since 1985 but added reference files to security checks in 2002.

[32] IDENT enables agencies to screen fingerprints against several different database repositories. USCIS enrolls aliens applying for asylum in the IDENT-Asylum database, screening them against previously enrolled asylum applicants, the immigration lookout database of criminal aliens, and the immigration recidivist database of repeat immigration offenders. Asylum offices completed approximately 146,000 applications receiving this three part check in FY 2004. Asylum offices have used this system since 1998. Source: Office of Inspector General (Nov, 2005), *A Review of U.S. Citizenship and Immigration Services Alien Security Checks* (DHS-OIG Report No. 06-06).

[33] The CLAIMS 3 and 4 systems enable the Service Centers to provide automated support to process applications and/or petitions for benefits, determine the status of pending applications and petitions for benefits, and account for and control the receipt and disposition of any fees collected.

[34] Formerly known as the Treasury Enforcement Communications System, TECS is operated by CBP.

unless they have already been identified as an "Ident" case by the FBI. Since the FBI maintains these records, another criminal history can be generated and faxed to USCIS.[35]

All records related to an IBIS check are printed and attached to the file and require a USCIS employee to stamp every hardcopy page of the TECS record to signify the nature of the information. However, some offices also use watermarks to eliminate the requirement to stamp each page. Since IBIS checks are valid for 180 days, USCIS district offices must manually track whether time has expired on a case. Positive information related to IBIS checks is documented on paper and the resolution is attached to the application.

FBI indices popular or "name checks" are initiated after USCIS inputs the data electronically and forwards it to the FBI. The request is associated with the application filed, rather than a unique identifier for the applicant, and USCIS is not automatically notified of name check results. USCIS must generate an inquiry to determine the status of a submitted name. Final results are printed and placed in the applicant's file. In cases where the name check results in a "positive record," USCIS must at times wait protracted periods for further information in order to resolve the hit.

4.3 Adjudicate

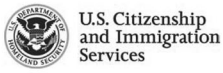
4.3.1 Review for Completeness, Eligibility, and Risk

USCIS conducts an initial review for completeness at the time of filing or just before an adjudication to ensure that documents required by statute or regulation have been sent to the agency. If all required initial documents are not submitted, a request for those documents is mailed to the applicant. Also, the adjudication officer may request additional evidence throughout the adjudication process.[36]

During the adjudication process, the file will be reviewed to ensure that all background checks are completed, current, and resolved according to USCIS operating procedures. Adjudications Officers will then examine the evidence received to determine if the applicant is eligible for the benefit. While "risk" is formally assessed with some types of applications, a standard risk-based assessment does not currently exist for most adjudications. Identification of fraud, for example, relies heavily on the skills of the individual Adjudications Officer rather than a systematic, definable approach. When potential fraud or security issues are identified, cases are referred to a special fraud detection unit for additional analysis and subsequent referral to the U.S. Immigration and Customs Enforcement (ICE), if appropriate.

[35] By USCIS policy, FBI fingerprint checks are valid for 15 months.

[36] For numerous reasons, including the volume of such requests, mailed requests and returning documentation has sometimes been lost or not properly associated with the original application. In some instances, this has led to criticism of the agency or the issuance of a denial that must later be vacated and reopened in favor of a new decision based on discovered documentation.



4.3.2 Interview

USCIS schedules and conducts interviews as required by statute and policy. The purpose of these interviews is to obtain accurate and complete information from the applicant in order to determine the credibility of an individual's claim for a benefit.

The in-person interviews with customers are conducted at the USCIS field offices, requiring appointment scheduling across a vast array of offices within the United States. The Service Centers receive the majority of applications and schedule initial interviews for local offices, while field offices are responsible for the interview scheduling for applications that are received at the office and those that require rescheduling. As a result, numerous scheduling processes have developed within local offices, which use both manual and electronic means to create and notify customers for appointments at field offices and ASCs.[37] Appointments with local information officers are self-scheduled by customers using the web-based InfoPass system. InfoPass is a scheduling system that is accessed directly by the customer through the USCIS website. Customers can schedule appointments at field offices for various services provided by Information Officers, such as emergency filings, general information, and case status inquiries.

Given the reliance of USCIS on hard copy files to adjudicate cases, and that only limited data is manually entered in a system, A-Files must be delivered to the field offices prior to the scheduled interview. This has been problematic since some customers appear for interviews before the field office receives their paperwork. This occurs with enough frequency that offices have instituted local processes to verify that A-Files are on hand prior to scheduling an appointment.

4.3.3 Adjudicate

Adjudication is the process by which a USCI Adjudications Officer determines if a person is eligible for benefits under the Immigration and Nationality Act (INA). Adjudications are completed by a review of paper documentation submitted in support of an application or petition in coordination with the completion of security checks, and in some cases, an interview of the applicant.

USCIS Adjudications Officers must repeatedly and "manually" access numerous systems to determine the status of, or reinitiate, various background checks in order to adjudicate a case. Not all case types have national Standard Operating Procedures (SOP) manuals, though many offices have established their own SOPs. While the Service Centers issue standard receipts, those are quite limited in function and flexibility, and national procedures or templates for the assembly of critical documents by Adjudications Officers (such as requests for evidence, notice of intent to deny, and notice of denial) are either not consistent or do not exist. The current systems do not use templates that can be merged with case data to produce

[37] Initial interviews for permanent residence are typically scheduled through CLAIMS4. Additionally, face-to-face interviews also occur at Asylum offices, but the number of these facilities is significantly smaller and business processes tend to be more centralized.

documents. As a result, some offices have created "stand alone" correspondence systems to manage the use of local templates. While Field Operations is beginning to develop national templates, particularly as the number of Service Centers adjudicating certain types of cases are being narrowed from four to two, many officers continue to use locally developed templates.

4.4 Issue

4.4.1 Document, Certificate, Card

USCIS is responsible for the issuance of documents identifying status of persons within the U.S. While the majority of document production has been centralized through the Integrated Card Production System (ICPS),[38] some documents are still generated at district offices (e.g., travel documents and certificates of naturalization and citizenship). Data related to applicants is manually typed to Certificates of Citizenship. Both Certificates of Citizenship and Certificates of Naturalization require the manual attachment of photographs and placement of the DHS seal to overlay the photograph on the certificate. Lost photographs are not uncommon. When this occurs, candidates for citizenship are required to obtain new photographs.

As a result of the inconsistent issuance processes, numerous versions of authorization cards and travel documents are being issued across the country, regularly causing difficulties for customers when seeking employment, state government identification documents, or verification of identity at reentry into the U.S. Additionally, the antiquated technology utilized to produce USCIS identity documents presents an increased security risk because it is not tamper proof, and documents are easy to alter or reproduce fraudulently. Nor does USCIS have an "activation and deactivation" capability to provide document security, which is particularly problematic since lawful permanent resident cards and employment authorization cards are typically mailed through USPS regular mail from the card production facility to the alien's last known address. No "in-person" interaction with a government agency or intermediary is required to receive the card, nor a process to verify receipt of the card.[39] Also, if an alien becomes ineligible to keep the card,[40] system entries to invalidate the status are not made in ways clearly designed to interrupt verified use of the card for employment or government benefits.

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[38] ICPS can only be accessed through a CLAIMS3 interface. Until recently, district offices did not have access to CLAIMS3 and were required to submit all cases to services centers for update and card production. Today, district offices are allowed limited access to CLAIMS3 to facilitate card production, but their ability to connect CLAIMS3 has proven sporadic.

[39] Many businesses within the private sector business, such as those issuing credit cards, require a home phone verification of receipt of the card, etc.

[40] Examples of such ineligibility is when a permanent resident is ordered removed, an employment authorized adjustment applicant is sent a denial notice for the underlying adjustment application thus invalidating the employment, or an employer withdraws a nonimmigrant petition for an alien who has used it to enter on a visa and received an I-94 card permitting employment.

4.5 Cross-Functional Activities

4.5.1 Notifications

USCIS issues notifications to acknowledge receipt of applications and petitions, request information, to provide information related to adjudication, and to notify the customer of the decision rendered by the agency. It also issues Notices to Appear before the Executive Office for Immigration Review (EOIR).

USCIS currently has standard receipt notices that are generated through CLAIMS 3 and CLAIMS 4 and are used to acknowledge receipt of applications and petitions filed through lockboxes and Service Centers. However, because of the antiquated programming features of the system, USCIS has difficulty changing the notices if information contained in the templates becomes outdated. USCIS has been widely criticized regarding the confusing language in the standard notifications that are issued from CLAIMS 4. As a result, many districts favor locally developed notifications.

USCIS has a range of notifications from standardized electronically generated receipt notices to locally developed notification templates. Each field office and service center has created local templates for issuance of denial notices, requests for evidence, Notices to Appear, and approval notices. These locally developed notices have sometimes resulted in inconsistent and/or inaccurate decisions that have eventually led to legal action against USCIS.

4.5.2 USCIS Records

An A-File is the set of records USCIS maintains on individuals to document their immigration status and citizenship. These files exist as a paper set of documents. An A-File can contain anywhere from one page to hundreds of pages of documents and forms, such as benefits applications and petitions, supporting documents, photographs, notifications, memorandums of investigation, record of proceedings before administrative review boards, and third-party information related to violation of law. A-Files are typically used to:

- grant or deny immigration-related benefits,
- prosecute individuals who violate immigration law,
- provide immigrant statistics,
- collect information for use in USCIS research and policy analysis,
- control and account for records in compliance with the code of federal regulations,
- document chain of custody for enforcement, and
- certify the existence or nonexistence of records.

USCIS estimates that the agency has more than 55 million of these paper-based files, each of which constitutes a permanent record under NARA regulations. The agency spends approximately $13 million each year transporting A-Files within USCIS and to other bureaus and agencies.

Today, USCIS manages applications both manually and electronically. The majority of cases are associated with a tracking number, and if needed they are accessible for the duration of

the established retention period.[41] A few types of applications filed at local offices and do not have tracking numbers. Such files are stored by month of filing for a specified period, as defined by records operating procedures. Most applications have an associated A-File number or application tracking number. File location is currently maintained through two systems – the National File Tracking System (NFTS) and Receipt Alien File Accountability and Control System (RAFACS).[42]

In some instances, files are not entered into these systems upon receipt or upon relocation. As a result, files cannot be located for significant periods of time or are categorized as "lost." While temporary files are created when necessary, this new information is sometimes not consolidated when original files are relocated. Although the existing case management systems are designed to update file tracking systems whenever an Adjudications Officer transfers a file, sometimes these updates do not occur properly. If an applicant's file cannot be located, the customer must resubmit an application and supporting documentation.

Additionally, when the application is for a non-immigrant benefit or the alien is outside the U.S., USCIS maintains paper records in files that are not maintained as "A-Files." These records are not maintained in the immigration Central Index System (CIS) and as a result are not readily accessible. The files are coded according to the service center where the application was filed. In other instances, applications are stored according to date of filing without any electronic tracking mechanism for future reference.

4.5.3 Reporting

USCIS has been criticized for inadequate reporting, in part because the agency relies on a combination of automated and manual methods to generate statistical reports. USCIS does not have an automated system to track case decisions and associate them with a specific Adjudications Officer. Nor does USCIS have the capability to track and report on cases that are transferred from one location to another. Required reports are generated through "home grown" systems within field offices throughout the country. Beyond that, USCIS is utilizing NFTS and RAFACS to track and monitor cases by pending category (e.g., name check, rap sheet, visa regress). Individual production tracking is dependent upon manual input, frequently resulting in unreliable reporting figures.

4.5.4 Interfaces with other Agencies

USCIS is limited in its ability to electronically interface with other federal agencies. Data sharing arrangements occur through point-to-point interfaces, which require rebuilding whenever a participating system is modified.

Data sharing between federal agencies provides additional information on which USCIS can base adjudications and policy and information development. It also helps improve national

[41] See USCIS Records Operations Handbook for retention periods.
[42] RAFACS is in the process of being migrated into NFTS.

security by expanding access to critical terrorist watch lists. Systems currently available to USCIS are:

- Department of Labor (DOL): through the Labor Condition Application (LCA) database USCIS Adjudications Officers can view data related to companies hiring non-immigrants. However, data from the system is sometimes six months old. DOL also provides access to historical data for permanent workers hired by U.S. companies.
- DOS: through the Consular Consolidated Database (CCD) system, Adjudications Officers view visa application and issuance information collected through the Consular Affairs modernized systems.[43]
- CBP: the Treasury Enforcement and Communications System (TECS) is the CBP master system that accesses several systems - IBIS, National Automated Immigration Lookout System (NAILS) and the National Immigrant Information System (NIIS). TECS is used to check these systems via special queries and is accessible to Adjudications Officers via the USCIS Central Index System.
- ICE: the Deportable Alien Control System (DACS) identifies those aliens who have been deported or are in proceeding; the system is accessible via the CIS.

[43] USCIS has agreed with DOS to share data from their respective case and file management systems, but the technological means for USCIS to provide that data remains limited since the most relevant information is currently stored within stove-piped mainframe systems.

5 DESCRIPTION OF THE NEW OPERATIONAL CONCEPT

5.1 Overview

The new USCIS operational concept will be based on a centralized, web-based solution designed to transform the USCIS business approach from a "transaction-centric" model to a "person-centric" model based on customer accounts. For individuals seeking benefits for themselves or derivatives and dependents, biometrics will be linked to an account to ensure unique identity.

5.1.1 Key Components

There are four components that represent the key features of the Transformation operational concept, supporting the operational capabilities identified in the USCIS Transformation Program Strategic Plan – Business Vision:

- Account-based Customer Management
- Paperless Adjudication
- Cohesive Analysis Environment
- Solid Performance Analytics

Account-based Customer Management represents the core technology, data tools, and processes required to create and present a single point of reference on specific customers. Under the proposed operational concept, USCIS will consolidate all information relating to individual customers under customer accounts supporting different types of interaction with the agency.[44] The use of accounts will enable Adjudications Officers to obtain a comprehensive view not only of information pertinent to a specific application or petition but of the entire history of the customer's interaction with the agency, thereby facilitating and improving the decision making process.[45]

The future operational concept makes provision for the management of the customer account environment to be performed by third party facilitators, able to support both account set up and subsequent transactions between USCIS and its customers in a manner that safeguards the privacy of customer records.

Paperless Adjudication is central to facilitating customer interaction with the agency, improving the agency work flow and improving the speed with which applications can be

[44] USCIS intends to leverage the DHS concept of unique identity and enumeration for the purpose of biometric verification. In those instances where the capture of biometrics is not an option, the agency is proposing to use another commonly accepted identifier (such as the FEIN) for the same purpose.

[45] Account based customer management draws on the Identify Customer, Apply for Benefits, Collect Fees, Assess Risk and Eligibility, Process and Adjudicate Requests and Applications, Communicate with Customers and Partner Agencies, and Manage Knowledge capabilities described in the USCIS Transformation Program Strategic Plan. Additionally, the common view facilitates appeals and error corrections processes.

adjudicated. The reengineering of the adjudications process will move the agency from a cumbersome, paper-based bureaucracy to a streamlined, paperless organization.[46]

A **Cohesive Analysis Environment** links analytic resources and tools to enable coordinated and comprehensive assessments of individuals and agency operations.[47]

Solid Performance Analytics make a unified approach to, and execution of both internal and customer facing capabilities possible by providing management with the foundation for ongoing process improvement and quality assurance.[48]

As illustrated in Figure 5-1, USCIS plans to transform the currently fragmented environment into an integrated end-to-end adjudicative process providing a variety of benefits. Current processes will be transformed into an integrated set of services. All information related to an individual will be linked in a single account and available through a centrally managed secure information system thereby creating the transformed end-to-end adjudicative process.

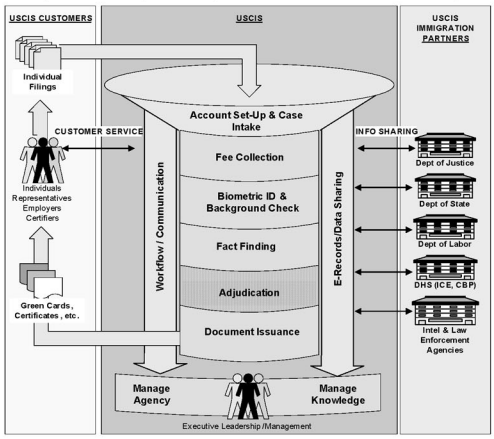


Figure 5-1: Proposed USCIS end-to-end Adjudicative Process

[46] Paperless adjudication incorporates the Apply for Benefits, Collect Fees, Assess Risk and Eligibility, Adjudicate Requests and Applications, Issue Documents, Communicate with Customers and Partner Agencies, and Manage Knowledge capabilities.

[47] The common view of specific and broad data combined with common risk models and understanding of data implications, provides a powerful toolset for the Manage Information, Knowledge and Intelligence, Assess Risk and Eligibility, Adjudicate Requests and Applications, and Manage Agency capabilities.

[48] In addition to supporting the Manage Agency capability, solid performance Analytics provide the basis for oversight confidence in the ability of the agency to meet its mission.

The Transformation Program will affect most aspects of USCIS operations and technology. USCIS operations will be transformed from a paper based process to an electronic environment, making it possible to incorporate more effective processing of low risk applicants and better identification of higher risk individuals.

The new operational concept will be designed around four major processes: 1) Account Set-up, 2) Case Intake, 3) Adjudication and 4) Document Issuance. The key characteristics of these processes include:

1. Account Set-up: To improve the management of information and communications between the customer and the agency, each customer will establish a customer account in the course of their first interaction with USCIS. This account will be referenced during all subsent interactions.
2. Case Intake: USCIS will modernize and automate its intake process, including the collection of application data, fees, and supporting documentation. Web-enabled tools will allow customers to electronically submit all information pertaining to benefit requests. Payments will be electronically processed and linked to the customer's account.
3. Adjudication: USCIS will incorporate work flow, case management, and decision support tools to streamline adjudicative processes and improve the consistency of determinations.
4. Document Issuance: USCIS will improve the issuance of benefits documentation through the systemic retrieval of biometrics and enhanced document security features to mitigate fraud risks from forgery, document distribution, and lack of receipt verification.

5.1.2 Case Management

As indicated in Section 5.1.1, key to the new USCIS operational concept is an account based approach to customer interaction and processing of transactions.

Under the proposed operational concept, USCIS will consolidate and present to customers the transaction types that are available online, in light of the applicant's immigration status as identified by the inquirer or account holder. This leads to a set of services that are more quickly comprehensible to the customer, who needs to only consider the types of transactions appropriate for his or her immigration status. Similar to online banking or online reservations services, a customer will be able to review the different benefit types and then, after finding the desired benefit, will either log-in to an existing account or establish an initial account in pursuit of a particular benefit. Alternatively, the customer may log-in or establish an account and then select the benefit. Account holders will have the option of completing the transaction through a conversational-like dialogue or in a form field approach. In the online filing experience, the system will guide an account holder to provide the fields of information that are unique to the transaction and have not been previously provided and do not require updating.

Access to the solution will require a user name and password and will be determined by assigned roles and rights. An audit trail will provide a record for each user's interaction with the system, including user name, transaction date and time.

Additionally, the proposed operational concept accommodates the use of batch filing to complete customer transactions, using published standards. USCIS anticipates that batch filing will particularly attractive to employers and representatives.

All information and documentation submitted by customers is subject to verification by USCIS in accordance with applicable regulations.

5.1.2.1 Access to Information stored in other Systems

Depending on authorization, users will also be able to access information stored in other USCIS and DHS systems.

5.1.2.2 Security of Internal Use Only Transactions

Items that require a FOIA request for disclosure will be maintained in a manner that prevents such items (e.g., electronic notes and electronic/scanned documents identified as "for internal use only") from being identified or accessed by the account holder. Scanned Adjudications Officer notes, marriage fraud video, and ICE Memorandums of Investigations are examples of information that would be maintained in such a manner, as well as notices from the Fraud Detection and National Security Division (FDNS) regarding the specific transaction or trends related to a transaction that require officer review.

5.1.2.3 Linking Legacy USCIS Transactions to Accounts

Legacy transactions, including digitized paper files, will be linked to accounts based on matches with customer provided data, such as A-Numbers and receipt numbers. Other legacy transactions will be linked to accounts based on matches with biographic data. Legacy transactions whose relation to the account is subject to question will need to be for data error or identity fraud.

5.1.2.4 Information Sharing with other Agencies

Subject to policy, the solution will be able to share information with systems belonging to other agencies to automatically provide data from those systems to the USCIS. For example, the solution should be able to pull from DOS's CCD system [49] biometric and

[49] CCD stores all visa application and issuance information collected through the Consular Affairs modernized systems at approximately two hundred and thirty sites (or posts) worldwide. Information entered in the system at all posts is replicated to the CCD within five minutes of data entry. Consular Consolidated Database Interagency Web Portal (CCDI) provides access from a web browser through the Open Sources Information System (OSIS) network to a subset of the data in the CCD. The CCD has been in use for a small number of users from other agencies for the past few months.

biographic information arising from a visa application made by an account holder and to compare it to other biometrics and biographic data in the USCIS account. Other source agencies include US-VISIT, CBP, and ICE.

Subject to policy, the solution will automatically share USCIS account and transaction information with other agencies/entities. For example, USCIS information about a benefits application should be made available to DOS for issuance of a nonimmigrant visa. ICE should be able to access USCIS data for NTA issuance or other enforcement activity. CBP inspectors should have access to account and relevant transaction data concerning applicants for admission. Eventually, subject to policy, the solution will provide for an active information exchange, enabling, ICE and CBP officers and DOJ Immigration Judges, and DOS consulates to update USCIS customer accounts as appropriate and to upload documentation. The system should also exchange information with partner agency systems, such as the DOL's Employer Electronic Verification System (EEVS) and DOS's Immigrant Visa Allocation Management System (IVAMS).

5.1.3 Customer Accounts

Under the future operational concept, USCIS will establish customer accounts not only for individuals seeking to apply or petition for benefits but for anyone seeking to do business with the agency, including employers, representatives, and certifiers. The rights associated with accounts for customers who seek benefits compared to the rights of accounts for those providing support (such as certifiers and representatives) are 'role based;' and any implementation will be determined by the selected technical solution. However, from a conceptual point of view, it is helpful to discuss these differences in terms of customer-specific account types.

5.1.3.1 Accounts for Individuals

The individual account is the centerpiece of the new operational concept, replacing the current paper "A-File" record and the CIS record tied to each "A-Number." The essence of this account will be the combination of core biographic information and biometrics taken during account setup and tied to the customer's account.

All persons requesting benefits from USCIS will be required to establish an individual account. This will include United States citizens, lawful permanent residents, immigrants, non-immigrants, and other benefit-seekers. Individual accounts will also be established for other persons engaging in business with USCIS, e.g., persons acting on behalf of representatives or certifiers. For these persons, the use of biometrics has not been determined.

In the case of individuals seeking immigration benefits, the completion of an individual account requires identity and security-related information and linking the account to biometric identifiers. If required, an individual establishing an account within the U.S. will be given the opportunity to schedule a biometrics appointment. While the account holder may file a transaction or become the subject of a petition before the account is finalized, no transaction will be processed until the account is finalized. Although aliens abroad can

initiate account setup and may be the subject of approved petitions without biometrics, the system will note that the account is missing biometrics and that adjudication cannot be completed prior to biometric data capture, background check, and enumeration.[50]

Additional information will be added to the individual account as transactions are filed, to ensure that the account holder is not overburdened by requests for repetitive information. Examples of such information are family relationships, residence history, work history, and educational history. The account holder will be notified when information from a transaction is being attached to the account. Data that is unique to the transaction, such as the job duties and terms of a sponsoring employer's offer of employment, will be maintained in the transaction record.

Family relationships among individual account holders will need to be established and updated for purposes of family sponsorship and derivation of immigration benefits.

Cornerstones of the individual account are the following:

1. Identity: information will be collected and maintained to establish the identity of persons and organizations seeking to do business with USCIS.

   While not all customers will be required to submit biometrics, a key feature of the new operational model will be the use of biometrics to establish the unique identity of customers and thereby reduce the risk of fraud. Accordingly, the agency will use a combination of the individual's core information, supporting documentation and the person's biometrics to establish identity, tracked through an enumerator. The enumerator will be assigned once the person has been uniquely identified based on biometrics (finger prints), and will become the primary system key for all personal data.[51] Additionally, because it is tied to the individual's biometrics, the use of the enumerator will enable transactions within other immigrant systems to be automaticallyl linked and therefore provide the Government with the ability to obtain a person-centric view of that individual's interactions with USCIS and its partner agencies.[52] As other federal agencies implement similar technologies, interoperability will be established so data can be shared between systems.

2. Security: information will be collected and maintained that will assist USCIS in conducting background checks on persons requesting immigration benefits. The agency will also use information that has been identified by the USCIS Fraud Detection and National Security Unit, ICE, CBP, FBI, and other federal law enforcement entities. Examples of this would be fingerprints and aliases used.

[50] At some point in the future, enumeration will take place based on the first time biometrics are captured by any of the immigration partner agencies. However, in the near future, individuals will be only enumerated based on the biometrics captured by USCIS.
[51] In future, USCIS may employ additional biometrics, such as "iris scans," if they become standardized in DHS.
[52] Ultimately, the use of the enumerator may also be adopted by other federal agencies, including CBP, ICE, DOS, and DOJ.

3. Efficiency: additional information will be collected and maintained, as opposed to being stored in records of transactions, to avoid duplicative requests for information and to prevent changes to personal information without explanation or justification. Once information is stored in the account, it will automatically be available for adjudicating future applications. Some types of information will not be collected, however, until it is required for a particular transaction. The account holder will be notified when information is added to an existing account and will be requested to verify its accuracy. USCIS will maintain a history of updates, such as employment history or educational background, provided by the account holder.
4. Tracking and Interoperability: records of immigration transactions about an individual, such as consular or USCIS petitions and applications, entries, exits, revocations, or enforcement encounters, will be linked to the account and be viewable by USCIS and other authorized government agencies involved in the immigration process. As a result, it will be possible to track, for example, an individual's association with a particular employer. Information in a customer's legacy A-File will not be formally linked to a new account unless an authorized officer confirms that the person is the same individual. However, transactions that occur before the ConOps is implemented will be retrievable based on a biometric match, A-Number identity, biographic parameter matching, and other criteria.

5.1.3.2 Accounts for Employers

Designed to complement the individual account, the accounts established for employers provide a consolidated record of any employer sponsoring foreign workers.[53] Employer accounts will be designed to accommodate different types of required information based on employer type (i.e., for-profit, non-profit, educational, and government entities). All persons and/or business entities acting as employers will be required to establish an account,[54]

Employer accounts will require account management by an in order to ensure responsibility for overall account information and transactions. Such individuals will be assigned an individual customer account with role-specific rights. Account managers will be able to authorize additional agents to conduct transactions and will be notified by the system about each transaction.

Cornerstones of the employer account are the following:

1. Identity: information will be collected and maintained to establish the identity of the entity requesting immigration benefits with USCIS and of the managers and agents interacting with the agency on the employer's behalf. USCIS will use a combination of the Federal Employer Identification Number (assigned by the Internal Revenue

[53] Since an employer should be able to establish one account for purposes of sponsoring alien workers and for general employment verification, interoperability with the USCIS's Employer Verification System will also be explored prior to implementation of the system.
[54] This generally includes individuals, sole proprietorships, corporations, educational institutions, non-profit organizations, and religious organizations.

Service and required for any petitioning employer),[55] core employer information and supporting documentation to establish identity upon initial contact with USCIS.

2. Security: information will be collected and maintained that will assist USCIS in detecting and deterring fraud related to employment within the United States. USCIS will use information that has been identified by FDNS, ICE, CBP, FBI and other federal law enforcement entities. To the extent allowed by law and participating agencies, the proposed operational concept anticipates a direct interface with DOS, the Internal Revenue Service (IRS), the Social Security Administration (SSA), DOL, DHS and other federal, state, or local law enforcement entities for the identification and prosecution of possible violations of the law. Examples of this would be wage information, Federal Employers Identification Number (FEIN), and W-4 information used to confirm that a company actually exists, does business, and employs other workers as represented in petitions to USCIS. Interfaces with private databases for information confirmation may also be used.
3. Administrative efficiency: additional information will be collected and maintained to avoid duplicative requests for information. Once stored, it will be available in the adjudication of future transaction requests by an employer. Information will not be collected until it is required for a specific transaction, and the account holder will be notified that the information is being added into the account. The account holder will be requested to verify that the information is accurate, enabling the holder to make updates as appropriate. USCIS will maintain a history of updates provided by the account holder. Examples of this would be information about foreign ownership or foreign company affiliation that is repeatedly relevant to requests for investors or intra-company transferees.
4. Tracking: all transactions by a particular employer will be viewable by Adjudications Officers to facilitate fraud analysis, compliance verification, and customer service. Associations with particular sponsored alien workers will be tracked and employers will be required to give notice of withdrawal of a petition or other filing when an alien's employment is terminated.

Relationships among companies will be tracked indirectly through FEINs, disclosed affiliations, managers and agents shared, employees sponsored, and representatives used. USCIS may explore the feasibility of allowing large companies to establish subsidiary accounts to be used by different divisions that prefer to manage their employment sponsorship separately.

5.1.3.3 Accounts for Representatives

The purpose of this type of account is to enable attorneys and representatives accredited by the Board of Immigration Appeals to conduct business with USCIS on behalf of customers

55 A FEIN is a nine-digit number assigned to sole proprietors, corporations, partnerships, estates, trusts, and other entities for tax filing and reporting purposes.

seeking to obtain immigration benefits. Representative accounts will be based on individual representatives and not on institutional affiliation.[56] It is anticipated that representatives will generally interact with USCIS in an online environment. Consequently, the sections pertaining to representation are written with that perspective.

A representative whose client-authorized representation has been established will receive notifications about action on the relevant account (i.e., account update) or transaction (i.e., receipt, request for evidence, decision), including any change of representation. A representative will be able to give notice of his or her involvement by adding the representative account number to the transaction at the time of submission on behalf of individuals and employers. Represented parties will receive their own notices about account changes and transaction events, including addition, withdrawal or substitution of a representative. In addition, customers can add or remove representatives directly. Notification to account holders and their ability to make changes, rather than independent verification by USCIS, will be the means to ensure that representations are correct in the system. Other methods of routine verification would impose unnecessary burdens on customers and limit the flexibility that web-based interaction will afford.

5.1.3.4 Accounts for Certifiers

The certifier account will enable agencies and entities certifying information to USCIS in support of customer transactions, or as required by law. Examples of certifier account holders are civil surgeons who prepare medical reports, individual or entities licensed to prepare and submit home studies for orphan adoption cases, entities authorized to certify the substantive qualifications of health care workers, and medical providers confirming disabilities of applicants for naturalization examination waivers. Certifiers will establish their accounts online, or through application to USCIS, and will maintain these accounts online. They will submit their certifications directly to USCIS by reference to the account of the individual on whose behalf they are providing the certificationccount numbers rather than through the individuals needing a certification. Customers will receive automatic account notification of the receipt of a certification relating to them. As in the case of the employer account, the ability to conduct business and perform account management functions will be restricted based on user roles and assigned to holders of an individual customer account.

5.2 Account Setup and Management

Account setup, is a critical service that allows customers to establish an account with USCIS during their first interaction with the agency and includes the submission of an account setup fee. Under the new operational concept all customers conducting business with USCSIS will be required to establish an account, including applicants, petitioners, employers, representatives, and certifiers.

[56] While others who assist an applicant in applying online, such as a notary, teacher, minister, friend etc, are required to identify themselves, they are not "representatives."

Users will be able to open accounts, to maintain their accounts, and to submit and query transactions for benefits via the web, mail, or in person, in a manner that is user-friendly and easy to understand. Customers managing their accounts via the web will be provided simple instructions, definitions, and other useful sources of information throughout the process.

Accounts will be established based on the personal or business information and supporting documentation necessary for USCIS to identify and contact the account holders.[57] Customers will be asked to provide additional account information as it becomes relevant to transactions and will be able to update that information in the account, as opposed to providing it repeatedly to USCIS in separate transactions.

Upon completion of account set up, any existing records on the account holder will be retrieved and electronically linked to the account.[58] A record of any changes made in the account will be maintained for audit trail purposes.

Customers will be able easily to update contact information, such as changes of address. Since future transactions (such as a request for benefit) will be automatically linked to the existing account, there will be no need to re-enter contact information. Information previously placed in the account will be permanently stored and resued. The Government will benefit from both a 360° view of a customer's transaction and the ability to hold customers to one identity. Fraud and national security analysts will also be able to map relationshps and patterns within the data to help detect and investigate matters of concern.

Certain features of customer accounts will be particularly useful for customers interacting with USCIS in an online environment. Account holders will be provided with user friendly access (such as through a Message Center) to notifications from USCIS arising from the account itself and from all transactions involving the account holder;[59] and account holders will be provided with a user friendly manner to send a message to, e.g. by selecting message types from a drop down menu of topics or a list of pending transactions.[60] Notifications from USCIS to the account holder will be clearly separated from messages by the account holder to USCIS. Examples of other types of interactive communications tools include a News Center in which USCIS can inform account holders of legislative, regulatory, or procedural changes related to the account, which may include a link to more complete information. The

[57] Customers working in a web environment will establish their accounts electronically. During account set-up, customers will be able to print out the questions for further review, even if answers were already submitted,and go back to edit previous responses. Customers will also be able to load images of supporting evidence for account information, such as identity documents, corporate charters and stock certificates.

[58] Upon transition from a paper based operating environment to a paperless operating environment, the role of records management will significantly change.

[59] Notifications to account holders (including to their representatives) should also be sent to the account holder's email address shown in the account record and sent by mail in predetermined situations as described in the section on Notifications. The account holder should be easily able to identify and distinguish between 1) all notifications sent, 2) the methods by which they were sent, and if appropriate 3) the representatives to whom they were also sent.

[60] In the event of email delivery failure, USCIS will rely on alternative contact information provided by the account holder. The account will be annotated to ensure that all communications failures are properly identified and tracked.

information posted to the account may be determined by the apparent status of the account holder.

Certain changes to the account and certain transactions will prompt the account holder to attach supporting documentation to the account or transaction record. Changes to the account based on a decision by USCIS, such as a link to a previous Alien Number, will be updated automatically and the account holder will be notified through a standard notification process.

Account holders will be able to review online all transactions submitted by or for them in a user friendly manner. The account holder will be able to "drill in" to a particular transaction in order to view more complete information and to conduct activity on the transaction such as uploading or downloading information or images, checking online case status, submitting inquiries, changing representatives, etc. The transaction status (e.g., received, pending receipt of payment or fee waiver decision, pending receipt of biometrics, assigned to Adjudications Officer, pending response to request for evidence or notice of intent to deny, pending background checks, pending interview, approved, denied) will be available for review online.[61] The account holder will also be able to download or print attachments submitted to the account or to transactions.

5.2.1 Biometric Identification

After the account set-up is completed, account holders required to submit biometrics will be allowed to schedule a biometrics appointment at an ASC or other enroller. The enroller will verify the identity of the account holder, obtain biometrics, and link the biometrics and supporting biographic information to the account. Upon verification of the submitted biometrics against all other biometrics captured by DHS, the individual will be enumerated and assigned an Enumerator.

As other immigration agencies, particularly DOS and CBP, move to the 10 fingerprint standard and establish biometrics and enumeration interoperability with USCIS, the enrollment process conducted by those agencies should suffice for USCIS. At that point, full enrollment, including enumeration, will only be required once for all agencies with immigration and border management responsibilities, and subsequent biometrics checks, such as two finger scan, will be performed for identity confirmation, such as at USCIS interviews.

Subsequent to the capture of biometrics, authorized users will be able to:

A. Validate identity against biometrics associated with the account.

B. Access all FBI fingerprint results concerning the person account holder (including accessible legacy transactions clearly involving that person).

[61] Authorized officers will have the capability to override certain transaction status notifications, such as not disclosing that background checks are pending.

C. Resubmit fingerprint data to the FBI.

D. Transmit the necessary data to card production systems when card production is required.

E. Compare biometrics to other databases, including IDENT/US-VISIT, as available.[62]

F. Compare biographics associated with transactions involving comparable biographics with each other to confirm the same person.

G. Obtain, store, retrieve, and share biometric data obtained through USCIS, CBP, ICE, and DOS databases, as well as other federal, state, and local databases (i.e., privatized enrollment services, state departments of motor vehicles).

Policy will dictate which categories of applicants may be exempt from fingerprinting.

5.2.2 Background Checks

Under the new operational concept, any background/security checks specified by USCIS may be initiated both manually and automatically (e.g., IBIS and FBI name and fingerprint checks), including any additional checks that may be established (such as nonproliferation screening performed by DOS within the Visa Mantis program).[63]

When all the security checks have cleared, the system will automatically update the account, or otherwise release the account and/or its transactions for adjudication. While account holders may be advised that a transaction is pending completion of these background checks, account holders will not be allowed to view specific information.

When a security check indicates that potentially derogatory information exists, the transaction will be forwarded to a specialized unit, such as FDNS, for appropriate action. Upon resolution of the information, the results will be annotated in account and the case returned for completion.

5.3 Case Intake

For customers filing online, USCIS will consolidate and present to customers the transaction types that are available, in light of the applicant's immigration status as identified by the inquirer or account holder. This leads to a set of services that are more quickly

[62] Similar to DOS and CBP, USCIS has stored its electronic fingerprints in US-VISIT and will need increasing ability to access that data for comparison with new enrollees, confirmation of identity of interviewees, and resubmission to the FBI. B2

[63] It is expected that IBIS checks will be conducted on every i-Account holder, and FBI fingerprint checks and FBI name checks on smaller subsets of applicant types as determined by USCIS. USCIS should be able to initiate checks both "manually" and automatically within set parameters. Examples of such automatic checks may be when biometrics are collected, 60 days after i-Account establishment when no biometrics are scheduled, 60 days after a biometrics appointment to which the applicant does not appear, upon filing of a case type for which biometrics are not required, and/or every 180 days after the previous check until decision. B2

comprehensible to the customer, who needs to only consider the types of transactions appropriate for his or her immigration status. Similar to online banking, a customer will be able to first review the available benefit options and then after finding the most appropriate benefit, the customer will either log in to an existing account or establish an initial account in pursuit of a particular benefit. Alternatively, the customer may log in or establish an account and then select the appropriate benefit. Account holders will have the option of completing the transaction through a conversational-like dialogue or in a form field approach. Additionally, customers will be able to batch file transactions with USCIS using published standards.

The account holder will also be able to attach supporting documentation to the account or to transactions in the form of digital images in formats identified by USCIS in compliance with National Archives and Records Administration (NARA) standards for electronic records (e.g., PDF with 300 dpi). Non-compliant transmissions will be automatically detected and rejected. The account holder will be able to submit new or updated information at any time prior to the adjudication. Upon receipt of updated information, the transaction will be automatically updated so that the Adjudications Officer can review the new information. All documentation submitted is subject to authentication in accordance with regulatory requirements.

Customers without access to the necessary automated tools will be able to submit applications, supporting documentation and fees in person or via mail, in which case the intake facility will convert the submitted information for use in the paperless adjudication environment and process fees on behalf of USCIS.

5.3.1 Representation during Transactions

Normally a representative will establish his or her representation of an individual or employer retaining the entity's services by by self-identifying when submitting a transaction on behalf of the represented party. Additionally, representatives may subsequently add themselves to a transaction or substitute themselves for another representative (declaring that they have the client's permission to do so). Representatives may also withdraw from an account or transaction, in which case the represented customer and all other affected customers will be automatically notified and can make corrections. Similarly, represented customers will also be able to withdraw representatives from their accounts and transactions.

After the account relationship has been established, the representative will be notified of every action taken in relation to a represented acount, to the same extent as the represented party is notified. Representatives will be able to upload documentation and download information and documentation relating to any account or transaction in which their representation has been entered. All transactions submitted by representatives are subject to verification in accordance with regulatory requirements to ensure that the account holder is authorized to represent the the customer identified in the transaction. The history of representation will be automatically tracked by transaction.

5.3.2 Fee Collection for Online Transactions

In the case of customers filing online, the required filing fee will be automatically calculated upon completion of a transaction. If the account holder is not ready to pay, the transaction can be saved for a predefined period as a draft transaction. Failure to pay within the predefined period will trigger a warning notification and then cancellation and deletion of the transaction. When account holders verify they are ready to pay, the user will be provided with the ability to pay online in a secure environment. After fee intake, the transaction will be automatically flagged to indicate that the required payment was received, and any discrepancies noted. The satisfactory remittance of the fee completes the filing of the transaction.

If account holders do not agree with the assessed fees, inquiries can be submitted to the agency.

5.3.3 Fee Waivers

Account holders will be able to request the waiver of applicable fees on any transaction. However, USCIS may designate some fees as not susceptible to waiver, such as the account set-up and biometric fees. Waivers will be granted subject to the submission by the account holder of supporting documentation to substantiate the waiver request. If the fee waiver is granted, the account holder will be notified and the transaction will proceed, including scheduling. If the fee waiver is denied, the account holder must submit the transaction with fee within a predefined period, with a warning notification built in, or the transaction will be canceled and deleted, with notice to the account holder.

5.4 Case Management

All account and transaction data are subject to verification by USCIS prior to processing, in accordance with regulatory requirements.

The account holder will be automatically notified when attachments to the transactions are required, whether for the account(s) or for the transaction itself, and provided with assistance in uploading these attachments. The account holder will have the option to submit the attachment(s) during the filing of the transaction or to submit the attachment(s) within a predefined period after submitting the transaction.

If the account holder chooses to submit the attachment(s) later, the account holder will be notified automatically that the transaction may be denied if attachments are not received within a predefined period. Any pending transaction will also be denied if the account holder fails to submit biometrics within a predefined period.

5.4.1 Acknowledging Transactions and Follow-up

Upon submitting the transaction, each account holder to whom the transaction applies will receive a notice containing relevant transaction and follow-up information.

5.4.2 Rejecting Transactions

In certain predetermined circumstances, transactions will be automatically rejected. For example:

- Filing a cap-subject H1B petition after the cap has been met;
- Untimely filing of an adjustment request; or
- An M-1 student filing for a change of status.

When a transaction is rejected, the account holder will be automatically notified with an explanation. In the case of individuals filing online, the account holder will be provided with the capability to override the rejection with an "insist on filing" feature, allowing the account holder to explain why the filing should not be rejected. If account holders file a transaction after using the override, they will be required to verify that they understand that they may not be eligible for the benefit sought and that the fee will not be refunded even if the benefit is denied. Transactions filed through the override feature will be immediately forwarded for review and action which may include denial, acceptance for further processing, or adjudication. All rejections and the reason for the rejection will be attached to the account for reference by both the account holder and USCIS personnel.

5.4.3 Counting Transactions

For management and oversight accountability purposes, all transactions will be automatically counted and sorted, distinguishing between various classifications and sub-classifications, including H-1B and H-2B. [64]

5.4.4 Transaction Archive and Reactivation

Transactions will be stored for a predefined period under the account. As subsequent transactions are granted, previously closed transactions will be archived. Both USCIS and the account holder will be able to access and view an archived transaction. When an account has been inactive for a predetermined period, the account will be archived. Both USCIS and the account holder will be able to access and view the archived account. The account holder can submit an additional transaction, reactivating the account.

5.4.5 Workload Management

Individual field offices will have the capability to set the Adjudications Officer's daily case assignments. Supervisors will be automatically alerted when an officer has a pending workload that is above authorized levels in order to enable the work to be redistributed as appropriate. Additionally, managers may electronically reassign cases among different officers and to accommodate schedule changes or role reassignments.

When a case has cleared intake, biometrics, background checks, and relevant scheduling services, it will be placed into a queue for assignment to an Adjudications Officer who will

[64] In some visa classifications, Congress has set numerical limitations or "caps" on how many visas can be issued during a fiscal year. The system should be able to track and monitor the caps by visa classification.

be able to draw down cases for adjudication. Transactions requiring interview, including cases later found to require an interview, will be directed to an appropriate field officer for interview. The system will set the interview at an appropriate and available time and place, and send a notice to the customer. Customers who did not schedule the interview at the time of case filing will be given a limited opportunity to schedule/reschedule an interview at the most convenient location.

5.4.6 Scheduling

The proposed operational model includes an integrated scheduling process to replace numerous scheduling processes used within USCIS. The scheduling process will accommodate at least five types of events:

1. Information Officer appointments at local offices, not necessarily related to a pending transaction;
2. Biometrics appointments at ASCs or other authorized enrollment services;
3. Adjustment of status interviews;
4. Naturalization interviews and oath ceremonies; and
5. Miscellaneous transaction interviews based on individualized referrals from Service Centers or other offices.

Events may be scheduled in three ways – automatic scheduling, self scheduling, and Adjudications Officer scheduling.

A. Automatic scheduling or self-scheduling: Account holders will be able to choose automatic scheduling or to self-schedule appointments through a status request feature. Self-schedules can be initiated at the time of filing, within a predetermined period after filing, or within a predetermined period after USCIS sends notice of a required appointment. Self-schedules may be performed online, via phone, or in person. Additionally, an account holder may request that family members be scheduled together. Account holders may also cancel and reschedule an appointment.

   All automatically scheduled appointments will be posted to the account(s) and a notice e-mailed and/or sent via mail.

B. Adjudications Officer scheduling: Officers may schedule an account holder to appear for a personal interview at a field office or to submit biometrics at an ASC or other enrollment facility. Such schedule notifications will be provided to the customer electronically and/or via mail.

5.4.7 Performance Reporting

Under the future operating model, all performance reporting tools will be managed in an integrated manner, enabling management to access “real time” production data.

Management will be able to utilize a performance measurement system that identifies the relevant outcomes and other performance criteria to be addressed through the identification and selection of appropriate system features.

Reports will be a critical feature of the system. Since every transaction will be tracked, users will have access to a daily log of their activities. All statistical data will be captured and headquarters reporting requirements will supported.

The reporting capabilities provided by the solution will enable the generation of standard and ad hoc reports on any data element or combination of data elements across a given date range. Sample types of reports include:

- Number of transactions by type filed over any given date range by zip code, office jurisdiction, region, and nation-wide.
- Decisions by type made over any given date range by officer, unit, office, region and nation.
- Number of transactions in any category over a given date range, officer, office, region, and nation.
- Cases that are beyond predetermined timeframes by form type, officer, and office.
- Fee waivers, reason, and equivalent revenue.
- Computer time spent on transaction by USCIS from start to finish.
- Average national percentages on decision types, time per decision, and comparison to officer, unit, office.
- Number of visas issued by category.
- Unauthorized access attempts by USCIS personnel and the public.
- Number of status documents issued by type and category
- Number of status documents whose receipt has been verified
- Number of status documents returned to USCIS as 'not-delivered'

5.5 Adjudication

The Adjudication process begins with verification of information provided by the applicant related either to the benefit being requested or to basic qualifications under the Immigration and Nationality Act. The Adjudications Officer must ensure that the applicant meets all eligibility requirements and that certain statutory and security-related requirements are documented in the record. Upon making a decision, the officer must annotate the decision and issue the required documentation in support of the decision. For example, when an application is approved, the officer will issue an approval notice. When an application is denied, the officer must issue a denial notice that includes the appropriate appeal information.

5.5.1 Eligibility and Status Verification

Whenever possible, Adjudications Officers will be able to access other government systems to verify adjudicative information or evidence. As information technology platforms are developed within other agencies and organizations, the USCIS solution will be able to gather and/or verify such information as:

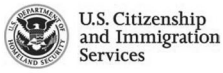
- DOL case numbers to verify Labor Certification Applications and Labor Condition Applications directly;
- Nonimmigrant visa information, including confirmation of biometrics, directly from the DOS CCD;
- Birth certificate number and biographic data to verify the account holder's birth certificate authenticity from vital records databases;
- FEIN to confirm that the employer has filed income tax returns with adjusted gross income, and wage withholding statements and payments, in keeping with representations to USCIS about the company;
- Educational data, such as a graduation date, diploma type, and biographic data from a school's database.

5.5.2 Paperless Adjudication

Under the proposed ConOps the current paper adjudication process will be replaced by a paperless adjudications process.

The Adjudications Officer will have access to transactions, all related accounts, and all associated documents, and be able to view the most relevant sets of account and transaction information on the same screen. The current manual adjudications process will be enhanced through the use of decision support tools with business rules to assist in the analysis of customer's profile and case history and partner agency data in order to flag potential fraud and high risk cases. The information will be displayed in a manner that facilitates the adjudication process (e.g., screen layout, tabs). In addition to account, transaction, and attached document tabs, the solution will also provide Adjudications Officers with direct links to:

- Associated Accounts: allowing the Adjudications Officer to review all associated accounts that relate to the account holder, such as the account of the petitioning spouse, derivative beneficiaries (i.e., spouse and children), employer, or representative.
- Associated Transactions: allowing the Adjudications Officer to review all transactions filed by the account holder, both pending and previously filed. A separate function will provide access to legacy system records and transactions that



appear to relate to the account holder based on biometrics, alien number, or biographic matches.[65]

- Internal Only Information: allowing the Adjudications Officer to review sensitive information, including Adjudications Officer notes and other information related to the account or transaction and not available to the public.
- Background Checks: allowing the Adjudications Officer to review the results of background checks related to a transaction. The background checks tool will also alert the officer if there is classified information related to the account and if the adjudication can proceed or if special action is required. Classified information will only be available to employees with appropriate clearance.

The paperless adjudication process will match or exceed the current paper process in memorializing decisions. Upon review of the transaction, the Adjudications Officer can:

A. Continue: The officer will have the ability to "continue" a case through a request to the account holder for additional information, complete additional review, or conduct additional background checks.[66] In this case, officer will issue the continuation notification (i.e., request for evidence or notice of intent to deny) and a due date for receiving the requested information. Depending on the mode of communication selected by the customer, the notification will either be posted electronically to the account or mailed. If the requested information is not attached to the transaction after a predetermined timeframe, the transaction will be automatically routed back to the officer. If additional information is received, the transaction will be automatically routed back to the officer for adjudication

B. Refer: The Adjudications Officer may refer (reassign) the transaction to a supervisor, another officer, or a designated organizational entity such as FDNS, or to another agency such as DOS, for review and resolution of articulated suspicions or other security concerns. Similar to background checks, cases will be returned to the Adjudications Officer after resolution.

C. Approve: The Adjudications Officer can approve the transaction. If the transaction is approved, an approval notification will be automatically created and posted to the account after review and edit by the officer. A typical approval notification template includes:

    1. Key account details;
    2. Transaction type;
    3. Approval date;
    4. Validity period;
    5. Other conditions and information related to the approved transaction; and

[65] Criteria for matching types of transactions, and other criteria for display of legacy records, will need to be developed.

[66] When a case can not be immediately adjudicated and for various reasons, such as requiring more supporting evidence or documentation from the customer, the case is held in abeyance and referred to as "continued."

6. Subsequent action(s) required by USCIS or by the account holder (account holder's appearance at a local office, USCIS card production and mailing, etc.).

If the approval would result in the issuance of a document, an order will be automatically placed with the document production service. USCIS may choose to have the approval notice and card delivered together from the card production facility. Approvals may be set, by category, by random selection of a portion of cases decided by each Adjudications Officer, by request of the officer, or otherwise, for review by a supervisor or quality assurance analyst. When a transaction is identified for review, notifications and documents will not be issued until the supervisor or quality assurance analyst has completed the review and electronically annotated the transaction.

D. Deny: The Adjudications Officer can deny the transaction. If the transaction is denied, a draft notification will be automatically generated for Adjudications Officer revision. A typical denial notification template would include:

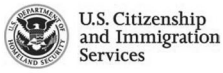
1. Key account details;
2. Transaction type;
3. Date of denial;
4. Summary of the facts;
5. Applicable law and regulations;
6. Legal basis for the denial;
7. Discretionary basis for denial;
8. Appeal/motion rights available to the account holder; and
9. Subsequent action(s) to be taken by USCIS or by the account holder.

Denials may be subject to review by a supervisor or quality assurance analyst as determined by management. When a transaction is identified for denial review, notifications and documents will not be issued until the supervisor or quality assurance analyst has completed the review and electronically annotated the transaction.

E. Reopen: The officer or supervisor can reopen a transaction and assign it to an officer to consider as a service motion or for revocation, rescission, approval or other action.

5.5.2.1 Notifications

Notifications will be built on standard templates, and all notices will bear the transaction number and the account number of the alien. Notices will be posted to the account and emailed and/or sent via mail or served in person, as appropriate. In cases where the customer is acting through a representative, the representative will be instructed to communicate with the represented party as required. Delivery failures will be annotated on the account and USCIS will attempt to contact the account holders using alternative the contact information provided by the customer. The Adjudicating Officer will be automatically notified when an



inquiry or response is submitted related to a notification. The issuance of a final notification or status document will end a transaction.

5.5.2.2 Electronic Resource Center

The solution will provide access to an electronic resource center for officers that will include links to authorities such as the following:

- INA, as amended;
- Title 8, 20 & 22 Code of Federal Regulations;
- Precedent and Administrative Decisions and Adopted Decisions (BIA and AAO);
- Federal Register notices and rules;
- Foreign Affairs Manual;
- Federal Court Decisions;
- Adjudicator's Field Manual; and
- USCIS policy memorandums.

The electronic resource center will provide context-specific access by transaction type as well as through an open query function.

5.6 Document Issuance

Upon approval of a transaction, Adjudications Officers will automatically issue a production order to the document production service to initiate production of the document. If documents also require biometrics, these will automatically be delivered to the card production service with the production request. At this time, temporary and permanent status identification documents include:[67]

1. Employment Authorization Document;
2. Advance Parole Document;
3. Refugee Travel Document;
4. Reentry Permit;
5. Conditional Resident Card;
6. Permanent Resident Card;
7. Replacement I-94 Card;
8. Certificate of Naturalization; and
9. Certificate of Citizenship

[67] USCIS may make changes to the current array of documents. For instance, advance parole, currently printed on paper with photo imbedded, may instead become a card and in some cases (such adjustment of status) be combined with the employment card. Certificates of Naturalization and of Citizenship may become more ceremonial in nature and be complemented by a Citizenship Card that will serve for identity and travel purposes under the People Access Security Service (PASS) system as envisioned by the Western Hemisphere Travel Initiative (WHTI). USCIS may even transition to the issuance of one identity card good for the life cycle of an customer subject to the requirements of the INA.

5.6.1 Document Production

Upon issuance, a copy of the biometrics and data provided on the document will be maintained for the purpose of status and/or employment verification.

When there is a significant delay in document production, or if a document has been returned as undeliverable, the document production center will post communications to the account and notify the account holder, using alternative contact information as appropriate.

5.7 Operational Policies and Constraints

USCIS determines eligibility for immigration benefits under the INA, as amended. It is not expected that the implementation of the operational concept will require statutory changes. The future operational model will conform to existing law, regulations, policy, and procedure. Operational policies related to the future operational model will be identified for each section below. The policies identified do not necessarily exist in current regulation, policy, or procedure. Some of the policies identified may require revision or additions to existing regulation, policy, and procedure. USCIS expects to use public notice and comment for promulgation of a comprehensive set of new forms and some additional regulations to implement the new system.

5.7.1 Operational Policies

Implementation of the proposed operational concept is based on the uniform implementation of the policies identified in the following sections.

5.7.1.1 Policies for Account Setup and Case Intake

A. All individuals and parties conducting business with USCIS will be required to open an account.

B. Every USCIS customer will be issued an account number.

C. Petitioners, applicants, dependenst and derivatives will provide biometrics to USCIS before the completion of a transaction, unless not required for the type of transaction or exempt by law or policy.

D. Account holders will be responsible for transmitting data and submitting documentation required for the account and transactions.

E. There will be a fee required to establish an account.

F. There will be one account per individual, employer or representative.

G. Account holders will be able to submit transactions through batch mode.

H. Account holders will be allowed to update account information.

I. No account information or transaction can be deleted.

J. Account holders can view, print, and retrieve account and transaction information and documentation that have been submitted on their behalf.

5.7.1.2 Policies for Paperless Adjudication

A. The officer will electronically authenticate decisions through an electronic signature.

B. Whenever possible, the electronic verification of information will replace the need for submitted documentation.

5.7.1.3 Policies for Notifications

A. Electronic notifications will supplement or replace paper mailings, when appropriate.

B. Decisions on benefits will be posted to the account.

C. Accounts will reflect current status (or potentially even statuses) and authorizations of the account holder.

5.7.1.4 Policies for Legacy Systems Interfaces and Inter-agency Data Sharing

A. The solution will provide "view only" access to legacy systems.

B. The solution will enable other federal, state, and local government agencies and account holders to share or exchange information relating to accounts and transactions, including verification of information and provision of visa numbers.

5.7.2 Policy Constraints

Policy constraints are defined as policy limitations or dependencies that USCIS needs to address in order to fully implement the system. Policy constraints should not limit the development of future capabilities. Potential policy constraints have been identified as:

1. Agreements with other federal and state agencies have not been reached to facilitate the manner and type of information exchange.
2. Agreements with other federal agencies have not been reached relating to joint use forms and the discontinuation of the alien registration number and the use of paper based processes.

6 SUMMARY OF IMPACTS AND ORGANIZATIONAL GAINS

In order to meet USCIS objectives relating to national security, customer service, and administrative efficiency, USCIS plans to streamline all adjudication related activities into a single automated solution. This solution will ensure consistency across USCIS operations in relation to case intake, biometric (collection, storage, and retrieval), background checks, electronic adjudication, scheduling, and notifications.

6.1 Comparison of Current and Future States

Table 6-1 below provides a summary comparison of the changes to USCIS operations resulting from the implementation of this ConOps.

CURRENT STATE	FUTURE STATE
• Applications, petitions and supporting documents are submitted by mail or electronically depending on where a customer lives and what a person is filing.	• Account set-up and case intake will be completed via mail, electronic submission (including batch filing) or in person.
• Some applications are not tracked and monitored electronically.	• All transactions will be tracked and monitored through the system.
• Applications and petitions are not always maintained in the paper file of the person.	• All transactions will be associated account of the customer and/or representative involved.
• Applications, petitions, and A-Files are lost.	• All transaction and core personal information will be maintained electronically in one virtual location and backed up in accordance with DHS security requirements.
• Support staff and contractors input data into USCIS systems.	• Data not submitted by the customer in electronic format will be entered at an application intake facility.
• Scheduling is generated through various electronic and manual scheduling systems.	• All scheduling will occur using an integrated scheduling service.
• Biometric information is associated with a specific application or petition. Customers have to submit biometrics multiple times.	• Biometric information will be associated with the account holder through a unique identifier. Account holders will only need to submit full biometrics one time and will provide limited biometrics in future encounters to confirm identity.
• FBI fingerprint checks are not conducted on all persons filing for benefits.	• FBI fingerprint checks will be conducted on all non-exempt persons filing for benefits. Biometrics collected by CBP and DOS will be leveraged as soon as they can be linked to accounts.
• USCIS must identify persons by information contained in file.	• USCIS will identify customers through account numbers.

CURRENT STATE	FUTURE STATE
• USCIS personnel must proactively check for background security clearances and must resolve the same "hit" each time a benefit is adjudicated.	• The completed background checks will be automatically attached to the account, and "hit" resolution remain available for subsequent adjudications.
• Customers must rely on USCIS to update their personal information.	• Account holders will be allowed to update personal information directly through their account.
• All official communication is through the mail.	• USCIS can choose to use account postings and optional email as exclusive means of communication or as complement to paper notices.
• Reports are manually generated.	• The solution will automatically generate certain reports and will facilitate additional reports.
• USCIS has limited electronic interfaces with other agencies to share data.	• USCIS will have robust interfaces with partner agencies to share data while protecting security and privacy.
• Files have to be shipped several times in the course of adjudication.	• All information related to transactions will be immediately available to all authorized users.
• USCIS fails to provide proper notification to attorneys and representatives.	• Representatives will maintain accounts with contact information, and representation will be captured electronically and associated to each transaction, ensuring proper notification.
• Individual USCIS offices use different decision templates maintained by individual Adjudications Officers and across District Offices and Service Centers.	• All USCIS components and Adjudications Officers will use standard decision templates.
• Information shared with other agencies is sometimes difficult to obtain, incomplete or not current.	• Information shared will be timely, complete and accurate.

Table 6-1: Comparison of Current and Future State

6.2 Resource and Production Impacts

USCIS recognizes that it does not have adequate tracking and reporting mechanisms. As a result, the agency has not always been successful at forecasting resources, required fees, and holding employees accountable for minimum production standards. Given the unreliability of workforce and production data, forecasting the impact of the proposed operational concept on USCIS is difficult. Nonetheless, TPO should track and evaluate the following over a period of 3-5 years:

- Increased need for training of officers and support staff in the use of automation and automated tools.
- Incremental decrease in the need for data entry, mailroom, scheduling, and file maintenance personnel and associated renegotiation of contracts.

- Transition of records personnel from paper to electronic records management.
- Incremental shutdown of antiquated legacy systems such as RNACS, 3, and CLAIMS 4.
- Increased capability to utilize personnel at their duty station to meet workload fluctuations, regardless of location.
- Reduction in shipping/postage costs.
- Reduced processing times for transactions.
- Failures to appear/failures to respond to requests.
- Number of filed Motions to Reopen.
- Real time production tracking and reporting capability.
- Reduction of inquiries to the National Customer Service Center and district offices.
- Quality of adjudications

6.3 Organizational Gains

USCIS will experience significant organizational gains through the successful implementation of the proposed operational concept, which will result in enhanced national security, improved customer service, and operational efficiency.

6.3.1 National Security

Implementation of the proposed operational concept will enhance national security by:

- Establishing identity through a combination of verified information, biometrics, and an assigned enumerator in the i-Account.
- Completing required background checks before any benefit is adjudicated.
- Providing the capability to share information with other federal law enforcement and government entities quickly and efficiently.
- Implementing procedures to verify information in lieu of accepting submitted documentation.
- Providing the capability to store and retrieve biometric information.
- Providing a background check process that will automatically initiate and track background checks as required.
- Providing the capability to track and monitor every transaction associated with account holders for use in information and intelligence gathering.
- Providing the ability to capture and update information in real time to assist with law enforcement efforts.
- Providing the capability to ensure that information on prior visa status and occupations for employment-based permanent resident applicants and other employment-related visa holders is consistently entered into a tracking system, and will interface with other immigration tracking systems.
- Streamlining the process of issuing a NTA against aliens found ineligible within the U.S. and deportable.

6.3.2 Improved Customer Service

USCIS is committed to becoming a customer-focused innovator of benefits processing and an accurate source of immigration benefits related information to our customers and the American public. The proposed operational concept will improve customer service by:

- Establishing accounts through which account holders can electronically submit transactions, update information, view case status online, and submit inquiries to USCIS.
- Electronically tracking and monitoring every transaction filed.
- Eliminating lost paperwork.
- Providing for instantaneous updates to accounts and transactions.
- Eliminating redundant requests for information and documentation.
- Eliminating the need to make multiple trips to USCIS offices for information.
- Providing account holders with the ability to self-schedule, cancel, and reschedule certain appointments to fit their needs.
- Providing account holders with the flexibility to choose the USCIS location to fit their schedules.
- Communicating electronically with account holders regarding requests for information and decisions made on transactions.
- Providing the capability to share information with other benefit providing agencies.

6.3.3 Operational Efficiency

USCIS recognizes the need to accurately forecast the demand for our services, prevent future backlogs, and improve our fee revenue and resource allocation planning. The proposed operational concept will enable USCIS to reach operational efficiency by:

- Providing a solution that will electronically track and monitor revenue and transactions.
- Providing a solution that will ensure regulatory compliance in the management of fees.
- Providing and implementing the capability to produce management reports that are timely and accurate.
- Providing the capability to assess productivity and the subsequent effect on preventing future backlogs in relation to case intake, scheduling, and standardized notification.

- Providing the capability to assess the effects of technology improvements on staffing allocation plans, as USCIS identifies a decrease in the need for mailroom, data entry, and records management services.
- Enforcing standard electronic quality assurance.
- Providing the capability to assess feasibility and costs of USCIS operations by transaction type.
- Providing options to improve timeliness for implementing fee updates.
- Providing a resource center for employees to utilize while making decisions on benefits.
- Providing standard notifications.
- Providing a standardized review process for decisions.
- Demonstrating the benefits relating to digital storage of fingerprints, including the time and cost savings to the account holders.
- Providing a national performance measurement system for USCIS operations.
- Providing information that is readily accessible and useful for high-level policy development.
- Providing information that can be used for research and analysis to support program and policy analysis and evaluation and high-level policy development.

ACRONYMS

Acronym	Definition
A-File	Administrative file
AAO	Administrative Appeals Office
ASC	Application Support Center
B-Number	Biometric Number (Enumerator)
BBSS	Benefits Biometric Support System
BCS	Background Check Service
BIA	Board of Immigration Appeals
BSS	Biometric Storage System
CBP	Customs & Border Protection
CCD	Consular Consolidated Database
CCDI	Consular Consolidated Database Interagency Web Portal
CIS	Central Index System
CLAIMS	Computer Linked Application Information Management System
ConOps	Concept of Operations
CSC	California Service Center
DACS	Deportable Alien Control System
DHS	Department of Homeland Security
DO	District Office
DOJ	Department of Justice
DOL	Department of Labor
DOS	Department of State
Dpi	Dots per Inch
EA	Enterprise Architecture
EEVS	Employer Electronic Verification System
EOIR	Executive Office for Immigration Review
FBI	Federal Bureau of Investigation
FDNS	Fraud Detection National Security
FEIN	Federal Employers Identification Number
FIPS	Freedom of Information Processing System
FOIA	Freedom of Information Act
FY	Fiscal Year
GAO	General Accounting Office
I-485	Application to register permanent residence or adjust status
IAFIS	Integrated Automated Fingerprint Identification System
IBIS	Interagency Border Inspection System
ICE	Immigration and Customs Enforcement
ICPS	Integrated Card Production System
IDENT	Automated Biometric Identification System
INA	Immigration and Naturalization Act

Acronym	Definition
INS	Immigration and Naturalization Service
IRS	Internal Revenue Service
ISD	Immigration Services Division
IT	Information Technology
IVAMS	Immigrant Visa Allocation Management System
LCA	Labor Condition Application
MFAS	Marriage Fraud Amendment System
NACARA	Nicaraguan Adjustment and Central American Relief Act
NAILS	National Automated Immigration Lookout System
NARA	National Archives and Records Administration
NBC	National Benefits Center
NCSC	National Customer Service Center
NFTS	National File Tracking System
NIIS	Non-immigrant Information System
NRC	National Records Center
NSC	Nebraska Service Center
NTA	Notice to Appear
OIG	Office of the Inspector General
OMB	Office of Management and Budget
OSIS	Open Sources Information System
PASS	People Access Security Service
PDF	Portable Document Format, a standard file format for mixed-mode image and text data invented by ADOBE
RAFACS	Receipt Alien File Accountability and Control System
RAPS	Refugee Asylum Processing System
RNACS	Reengineered Naturalization Application Casework System
SEVIS	Student and Exchange Visitor Information System
SEVP	Student and Exchange Visitor Program
SNAP	Scheduling Notification for Applicant Processing System
SOP	Standard Operating Procedure
SRTM	Service Request Management Tool
SSA	Social Security Administration
TECS	Treasury Enforcement Computer System
TPO	Transformation Program Office
TSC	Texas Service Center
TWP	Temporary Worker Program
U.S.	United States of America
USCIS	United States Citizenship and Immigration Services

Acronym	Definition
VIS	Verification Information System
VSC	Vermont Service Center
WHTI	Western Hemisphere Travel Initiative
XML	Extensible Markup Language, a standard for exchanging text data between database systems

USCIS Surge Response Plan

May 22, 2008

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Executive Summary

Filing Surge

Events in the summer of 2007 brought a significant increase in the number of immigration benefit applications and petitions filed with U.S. Citizenship and Immigration Services (USCIS) that resulted in a corresponding increase in the pending application workload. This dramatic increase in immigration applications was triggered by:

- A significant year-long increase in naturalization applications that peaked in the 4th quarter;
- Applicants filing various immigration forms ahead of the increase in USCIS application and petition fees effective on July 30, 2007; and
- An unexpected increase in employment-based (EB) adjustment-of-status applications.

This influx of filings created a delay in receipting applications (sometimes referred to as a "front log") as the volume of applications received exceeding available intake capacity.

In July and August 2007, nearly 2.5 million immigration benefit applications and petitions of all types were received. This represented a significant increase in volume when compared to 1.2 million applications and petitions received during the same period in the previous year. During FY 2007 USCIS received nearly 1.4 million applications for naturalization, almost double the volume received the year before.

The new USCIS fee schedule introduced in July 2007 provides the resources needed for USCIS to pursue investments that will enhance operational capabilities, strengthen the security and integrity of our immigration system, improve customer service, and modernize business operations. Under the new fee structure, USCIS has:

- Initiated actions to hire 1,500 new employees;
- Begun to invest in long-term sustainable information technology (IT) solutions that will modernize the agency;
- Initiated work orders to modernize USCIS physical plant and infrastructure through the construction and renovation of USCIS facilities; and
- Opened a new USCIS academy that will develop a highly educated and professional workforce, equipped with the necessary knowledge, capabilities and skills to enable USCIS to deliver on its critical mission, confront the complex national security challenges ahead and provide excellence in customer service.

Under this plan, USCIS projects that by the end of FY 2008 average processing times will be as follows:

- Naturalization applications (N-400) will increase from the FY 2007 average of 7 months or less to approximately 13–15 months.

- Family-based adjustment-of-status (I-485) applications will increase from the FY 2007 average of 6 months or less to approximately 10–12 months.
- Immigrant petitions for relatives (I-130) and workers (I-140) will increase from the FY2007 average of 6–7 months to approximately 8–9 months.
- Due to the DOS July Visa Bulletin making almost all employment based preference categories current during the month of July, applicants for whom a visa number is no longer available may wait years before another EB visa becomes available.

Strategic Approach

USCIS has developed a comprehensive production plan that incorporates a number of process improvements and efficiency gains that will make possible a swift and efficient response to the surge of filings that were received during the summer of 2007. The plan has been built around three core strategic pillars that are considered critical to effectively addressing the surge: staffing; technology; and process improvements. By implementing this plan, USCIS expects to eliminate the backlog of surge cases filed during the summer of 2007 and reduce overall processing times by 20 percent (using the FY 2007 processing times as a benchmark) as pledged in the July 2007 Fee Rule, by no later than the end of the second quarter FY 2010. The three core strategic pillars include the following elements:

1. Staffing

Hiring:

- Toward the end of FY 2007, USCIS proactively developed and implemented plans to hire and train 1,500 new employees added through the fee rule. Nearly half of these positions are for Adjudication Officers who, after graduating from the USCIS 8-week basic immigration training program and practicum, will have a direct impact on reducing the number of pending cases. With surge-related revenue, USCIS is leveraging current hiring and training activities to add even more staff on a temporary basis to address the increased workload.
- Re-hired annuitants are being added to further bolster, train and mentor the temporary employees hired under the surge elimination plan.

Resource Augmentation:

- Employ additional overtime and shift work as necessary.
- Use Asylum Office facilities and staff for naturalization interviews.
- Detail employees to areas that have been most heavily impacted by the surge.
- Provide funding to the FBI to cover the costs of conducting additional surge related applicant fingerprint and name check services.

2. Technology

USCIS has identified and prioritized the following information technology (IT) initiatives that will have a lasting positive impact on the adjudications process:

- Expand the Systems Qualified Adjudication (SQA) and other business rules based processes to include Replacement of Permanent Resident Card (I-90), Reentry permit /Refugee Travel Documents (I-131), and Employment Authorization Document (I-765) forms as well as Temporary Protected Status (TPS) renewals, and other products. Through SQA, more electronic adjudication of applications is possible, allowing adjudicators to focus their time on more complicated applications.
- Upgrade existing IT applications through business process reengineering to establish functional alignment between business system processes and the automated system supporting them.
- Upgrade the IT infrastructure to optimize and centralize N-400 pre-adjudication processing work at the National Benefits Center.
- Develop centrally controlled and locally printed Naturalization Certificates to give field offices enhanced internal controls and improved capabilities for timely generation of certificates.

3. Process Improvements

USCIS will adjust the interview process to recover valuable adjudicator time that should be focused on decision making. This will include expansion of the National Benefits Center's (NBC) case review, risk analysis, and background check function and the use of newly hired entry level Adjudications Officers and non-adjudicator staff[1] for activities such as naturalization testing and certificate/photo signing. These changes will improve the adjudicator's ability to detect possible fraud and make sound decisions. In addition, USCIS will shift the upfront intake processing of the N-400 form from the Services Centers to the Department of Treasury administered Chicago Lockbox, and operationally activate full electronic submission of naturalization applications.

Conclusion

USCIS must continue to balance and prioritize work to ensure the best possible service without jeopardizing national security or the integrity of the adjudications process. FY 2008 is a transition year for USCIS as it works to eliminate the backlog of applications received during the summer of 2007 while also working to secure improvements made possible by the introduction of the new fee schedule in July 2007. USCIS is committed to fulfilling its promise of maintaining the integrity of the immigration system, while also building a strong foundation to provide excellence in customer service.

[1] Includes Fraud Detection and National Security (FDNS) Officers working overtime hours in the capacity of Adjudication Officers.

Surge Response Plan

Filing Surge

During FY 2007, U.S. Citizenship and Immigration Services (USCIS) experienced a significant surge in the number of filings for immigration benefits. Naturalization filings nearly doubled from 730,000 in FY 2006 to almost 1.4 million, and changes published by the Department of State (DOS) in their July Visa Bulletin resulted in the filing of nearly 300,000 applications for employment-based (EB) adjustment of status, along with approximately 500,000 interim benefit requests for employment authorization (I-765) and travel documents (I-131). In July and August, nearly 2.5 million applications and petitions were received – almost double the number received in July and August of 2006. Overall, in terms of Equivalent Units (EUs),[2] receipts in FY 2007 were 41% higher than in FY 2006.

This filing surge, most of which occurred in the last half of FY 2007, resulted in a significant volume of pending work getting carried forward into FY 2008. Because this volume of additional work was not anticipated in resource planning for FY 2008, USCIS developed a supplementary resource plan that has been approved by Congress. The resource plan allocated surge-related revenue towards the staffing and technology improvements outlined in the plan. Through resources provided in the original and supplementary surge resource plans, USCIS expects to eliminate the backlog and achieve its published processing time goals by no later than the end of the 2nd quarter of FY 2010.

Processing Time Commitments – FY 2008

In connection with implementing the new immigration fee schedule in July 2007, USCIS committed to delivering, by the end of FY 2008, sizable case processing time reductions in key applications types that together represent over one third of all applications and petitions filed. These commitments included reducing the processing times for Application for Naturalization (N-400) to 5 months and Adjustment of Status (I-485), Replacement of Permanent Resident Card (I-90) and Immigrant Petition for Alien Worker (I-140) to 4 months. USCIS has determined that meeting the existing time frames is no longer feasible because of the surge. As depicted in the table below, meeting these commitments by the end of FY 2008 would require nearly doubling the completion of N-400s and a forty two percent increase in I-485 completions.

Form	Annual Completions Needed for a 1-Year Plan			FY 2008 vs. FY 2006/2007 Average
	FY 2008 Targets	FY 2007 Actual	FY 2006 Actual	
N-400	1,493,659	748,916	823,385	+90%
I-485 (Family/Employment)	1,009,102	614,310	805,698	+42%
Total Completions (in EUs)	5,296,826	3,585,980	4,144,089	+37%

[2] "Equivalent Unit" is a measure of officer hour volume that serves to equalize form types based on the investment of productive time required for adjudication.

To achieve such targets, USCIS estimates that more than 3,000 full-time employees would be needed, over and above the 1,500 employees authorized under the fee rule. USCIS cannot grow a trained workforce of that level in such a short period of time. Alternatively, a production and resource plan covering approximately 2 years was developed that provides the blueprint for achieving the processing time goals established in the fee rule by no later than the end of the 2nd quarter of FY 2010.

Process Improvements

USCIS has identified a number of opportunities to improve efficiency. While it is difficult to predict specific gains for each element, our plan calls for process improvements and a re-engineering of the interview process that will deliver an average 6 percent efficiency gain for all form types and an 8 percent gain for I-485s over the two year plan period.

Specific improvements include:

Information Technology (IT) Enhancements:

1. Expand the Systems Qualified Adjudication and other business rules based processes to include the I-90, I-131, and I-765 forms, TPS renewals, and other products.
2. Upgrade existing IT applications through business process reengineering to establish functional alignment between business system processes and the automated system supporting them.
3. Upgrade the IT infrastructure to optimize and centralize N-400 pre-adjudication processing work at the National Benefits Center.
4. Background Check processing improvements.
5. Develop centrally controlled locally printed Naturalization Certificates that enhance field office internal controls and yield improved capabilities for timely generation of certificates.

Re-engineer Interview Process

USCIS will adjust the interview process to focus valuable adjudicator time on decision making. This will include expansion of the NBC case review, risk analysis, and background check function and the use of newly hired entry level Adjudications Officers and non-adjudicator staff[3] for activities such as naturalization testing and certificate/photo signing. These changes will improve the adjudicator's ability to detect possible fraud and make sound decisions. In addition, USCIS will shift the upfront intake processing of the N-400 form from the Services Centers to the Department of Treasury administered Chicago Lockbox, and operationally activate full electronic submission of naturalization applications.

[3] Includes Fraud Detection and National Security (FDNS) Officers working overtime hours in the capacity of Adjudication Officers.

Overtime

USCIS will make additional overtime funding available to increase the productive hours worked by adjudicators and support staff by five percent. This equates to an average of four hours per pay period for each employee, which is estimated to be a sustainable level throughout the production plan period without instituting unreasonable mandatory overtime requirements and/or experiencing productivity losses.

Asylum Program Support

USCIS will engage its Refugee, Asylum, and International Operations Directorate to assist in the surge elimination effort by utilizing available Asylum staff and program facilities. These additional resources will be used to support naturalization interviews and case processing on weekends and after normal shift hours on overtime. Asylum Office facilities, which are designed for interview processing, are located in metropolitan areas where USCIS experienced its most significant increases in workload involving applicant interviews. Providing the opportunity for Asylum staff to become cross-trained in naturalization processing will qualify them to participate in the surge elimination effort by working after their normal shift hours and on weekends in an overtime capacity.

Term Extensions

At the beginning of FY 2008, there were 379 term employees on-board within the USCIS field offices. All term appointments have been extended through the 3rd quarter of FY2008, and those with time remaining on their initial four-year appointments are being extended through the end of the 2nd quarter FY2010, or the maximum time period allowed by the Office of Personnel Management (OPM). As attrition occurs before the 2nd quarter of 2010, additional hiring for temporary positions will be initiated to backfill these positions. Term position vacancy announcements are being issued as needed to give term employees who have separated from their original appointments the opportunity to compete for a new position, thereby allowing employment with USCIS to continue through the 2-year surge elimination period.

Hiring

In addition to the process improvements and term extensions outlined above, USCIS must hire an additional 885 government employees and 527 records and adjudications clerical contractor staff to eliminate the backlogs over the next two and a half years. This is in addition to the 1,500 positions authorized in the FY 2008 budget. USCIS is in the process of developing facility plans and strategies to timely address all associated space requirements. Of the total growth in positions, 790 are needed for the four Service Centers and the NBC and 429 for the field offices located in New York, Los Angeles, Miami and Boston.

Government Hires	Field Offices	NBC	Service Centers	HQ	Total
Adjudication Officer (AO) FCIP	177	132	264		573
Supervisory AOs	10	10	30		50
Immigration Information Officer (Term)	109	16	48		173
Admin Support (Term)	5	3	12		20
Clerical	0	14	22		36
I.T. Specialists & Computer Scientists				31	31
Space Mgt Specialists				2	2
Total	**301**	**175**	**376**	**33**	**885**

Contract Expansion	Field Offices	NBC	Service Centers	HQ	Total
Adjudication Clerical	207	239	0		446
Records Clerical	81	0	0		81
Total	**288**	**239**	**0**		**527**

Total Government and Contract	**589**	**414**	**376**	**33**	**1,412**

USCIS is able to fill its Adjudications Officer positions using the Federal Career Intern Program (FCIP) hiring authority, which has a 2-year appointment requirement. Those appointed under this authority will be eligible for conversion to permanent status without further competition if there is an ongoing need for their services once the backlog in surge applications has been eliminated.

Processing Times

Based on current pending application and petition levels and projected new receipts, this plan will achieve processing time improvements by no later than the end of the 2nd quarter of 2010. The following are projected processing time milestones for key application types:

Form	End of FY 2007 Actual	FY 2008		FY 2009	
		Fee Rule Processing Time Commitment	Surge Plan	Fee Rule Processing Time Commitment	Surge Plan
N-400	6.9 Months	5 Months	13-15 Months	5 Months	5-6 Months
I-485	5.8 Months	4 Months	8-9 Months	4 Months	4-5 Months
I-130	5.9 Months	6 Months	6-10 Months	5 Months	4-5 Months

USCIS has opted for a balanced approach in addressing the naturalization and adjustment-of-status workload since both confer benefits that are extremely important to individuals and the

Nation. By targeting an 8-9 month processing time for I-485s in FY 2008, we are able to allocate resources to meet the greater surge in naturalization filings, yet avoid the unnecessary renewal of thousands of Employment Authorization Documents every two years and Advance Parole / Travel documents that expire annually. This should also ensure sufficient and steady demand for visa numbers so the DOS will not need to advance priority dates abruptly on the monthly visa bulletin.

Production Targets

Targets have been set for production in FY 2008 and FY 2009 for each form type as follows:

Form	Annual Completions – 2 Year Surge Plan			FY 2008/2009 Average vs. FY 2007
	FY 2007 Actual	FY 2008 Target	FY 2009 Target	
N-400	748,932	1,014,945	1,150,075	+45%
I-485 (EB/FB)	596,310	601,554	885,334	+25%
Total EUs	3.57 million	3.98 million	4.69 million	+21%

Surge Elimination Plan Assumptions/Dependencies

- **Receipt Projections** – Projected processing times are based on receipt projections for FY 2008 and FY 2009. Our plan sets numeric targets for each form type based on staffing levels. If new receipts come in higher than projected, processing times will likely become longer. Conversely, if new receipts come in lower than projected, processing times will likely be shorter.

- **FBI Name Checks** – This plan assumes that by the beginning of the fourth quarter of FY 2009, the backlog of name checks will be eliminated. If backlogs persist at the FBI, processing times may appear shorter due to a greater number of cases being deducted from processing time calculation because they are outside of USCIS control. It is also recognized the surge in receipts has increased the workload of USCIS' Fraud Detection and National Security (FDNS) Operations and Center Background Check Units.

- **Visa Bulletin** – USCIS will manage family-based and employment-based adjustment-of-status completions to meet targets collaboratively set with DOS. This should minimize volatility in the movement of priority dates. Should DOS advance priority dates abruptly, resources would need to be diverted to deal with unanticipated workload surges.

- **IT Support** – To realize the required efficiency gains, existing systems must remain in good working order and some enhanced capabilities must be delivered. Examples include moving

N-400 processing to Lockbox and NBC and systems qualified adjudications for I-90, I-131, and I-765 forms.

- **Training** – Adjudication Officer BASIC training will be 8 weeks, including a practicum at the NBC and at the employee's home center or field office. Other training initiatives will principally be targeted toward improving quality and/or increasing production. Additional practicum training will be deferred and scheduled after processing times are in normal range.

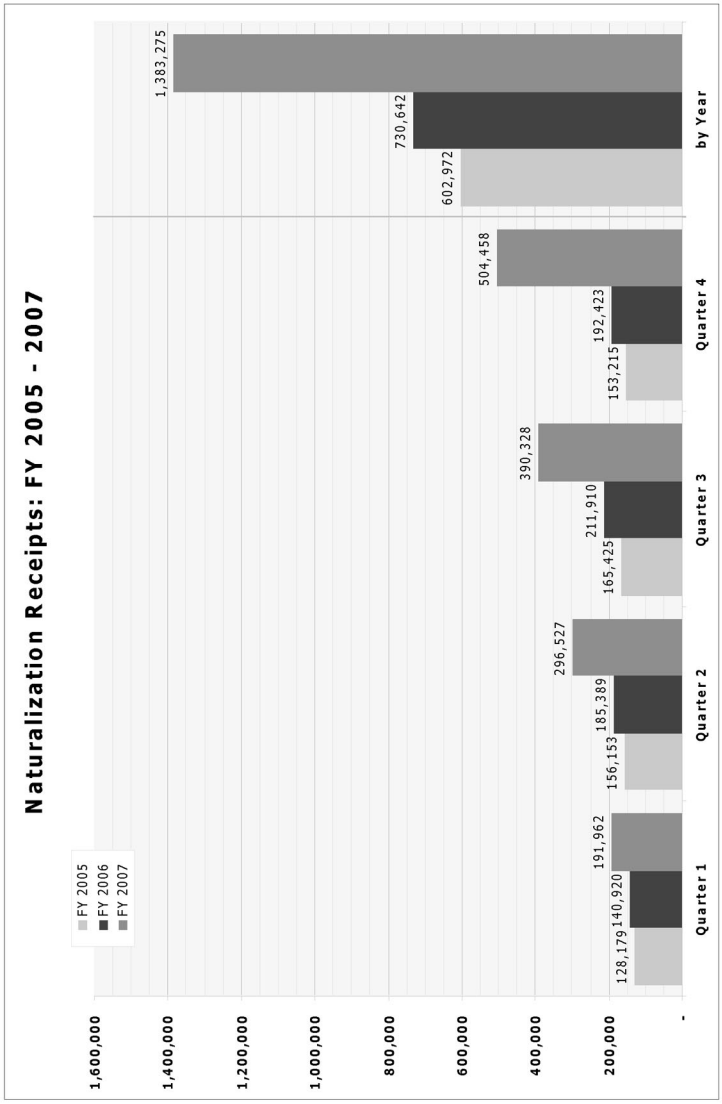
- **Hiring** – Must be completed with employees on board between July and September, 2008 and trained by the end of the 1st quarter of FY 2009. OPM has granted USCIS rehired annuitant authority that will help expedite the hiring process.

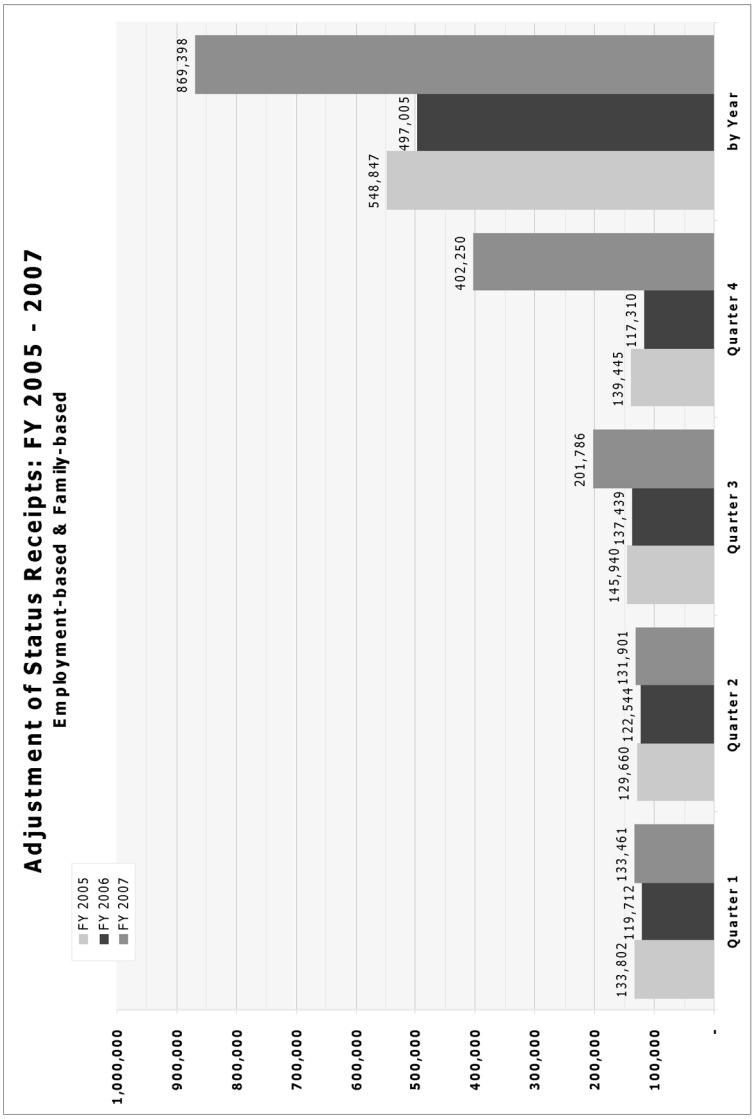
- **Space/Shift Work** – Because of the immediate and short-term nature of this workload, staff may be required to work shift work and may be assigned to less than ideal work environments (shared and/or smaller workspace).

- **Details** – Funding has been made available, through a supplemental resource plan approved by Congress, to cover the costs of temporarily detailing staff from offices with excess capacity to those in most need.

Conclusion

USCIS must continue to balance and prioritize work to ensure the best possible service without jeopardizing national security or the integrity of the adjudications process. FY 2008 is a transition year for USCIS as it works to eliminate the backlog of applications received during the summer of 2007 while also working to secure improvements made possible by the introduction of the new fee schedule in July 2007. USCIS is committed to fulfilling its promise of maintaining the integrity of the immigration system, while also building a strong foundation to provide excellence in customer service.


Naturalization Receipts: FY 2005 - 2007
FY 2005
FY 2006
FY 2007
1,600,000
1,400,000
1,200,000
1,000,000
800,000
600,000
400,000
200,000
-
128,179
140,920
191,962
156,153
185,389
296,527
165,425
211,910
390,328
153,215
192,423
504,458
602,972
730,642
1,383,275
Quarter 1
Quarter 2
Quarter 3
Quarter 4
by Year


Adjustment of Status Receipts: FY 2005 - 2007
Employment-based & Family-based
FY 2005
FY 2006
FY 2007
1,000,000
900,000
800,000
700,000
600,000
500,000
400,000
300,000
200,000
100,000
-
133,802
119,712
133,461
129,660
122,544
131,901
145,940
137,439
201,786
139,445
117,310
402,250
548,847
497,005
869,398
Quarter 1
Quarter 2
Quarter 3
Quarter 4
by Year

RESPONSES TO POST-HEARING QUESTIONS FROM STEPHEN A. EDSON, DEPUTY ASSISTANT SECRETARY OF STATE FOR VISA SERVICE, UNITED STATES DEPARTMENT OF STATE

Questions for the Record Submitted to
Deputy Assistant Secretary Stephen A. "Tony" Edson by
Representative Steve King (#1)
House Committee on the Judiciary
Subcommittee on Immigration, Citizenship, Refugees,
Border Security, and International Law
April 30, 2008

Question:

What improvements in communication between USCIS, the Department of Labor, and the State Department have been made—and what improvements can be made in the future--to achieve more accurate cut-off dates for the Visa Bulletin?

Answer:

Formal monthly meetings are held between the Department of State, USCIS, and the Department of Labor to discuss pending demand for visa numbers and estimates of number use in the coming months. In addition, the Department of State obtains updated estimates and data tables from USCIS as needed during each month.

We are also continually upgrading the automated immigrant visa allocation system used by USCIS offices to request visa numbers, to make it as useful and responsive as possible to the needs of USCIS.

Questions for the Record Submitted to
Chief of Visa Control and Reporting Division Charles Oppenheim by
Representative Steve King (#2)
House Committee on the Judiciary
Subcommittee on Immigration, Citizenship, Refugees,
Border Security, and International Law
April 30, 2008

Question:

Mr. Edson's written testimony (p. 2) states that over 95% percent of the annual worldwide limit of green cards have been used in the past three years. Has the limit ever been exceeded?

Answer:

The Family-Sponsored Preference limit was exceeded in Fiscal Years 1995, 1996, and 1997, but in no year by more than 115 numbers. The Employment-Based Preference limit was exceeded in Fiscal Year 1993, by 41 numbers. Neither the Family-Sponsored nor the Employment-Based Preference limits have been exceeded from Fiscal Year 1998 to the present.

Questions for the Record Submitted to
Chief of Visa Control and Reporting Division Charles Oppenheim by
Representative Steve King (#3)
House Committee on the Judiciary
Subcommittee on Immigration, Citizenship, Refugees,
Border Security, and International Law
April 30, 2008

Question:

What improvements can be made in the timing and the nature of the communications between your office, USCIS, and the Department of Labor to achieve maximum utilization of the preference visa numbers without exceeding the statutory limits?

Answer:

Formal monthly meetings are held between the Department of State, USCIS, and the Department of Labor to discuss pending demand for visa numbers and estimates of number use in the coming months. In addition, the Department of State obtains updated estimates and data tables from USCIS as needed during each month. Relations with the CIS service centers have always been effective.

We are also continually upgrading the automated immigrant visa allocation system used by USCIS offices to request visa numbers, to make it as useful and responsive as possible to the needs of USCIS.

Questions for the Record Submitted to
Chief of Visa Control and Reporting Division Charles Oppenheim by
Representative Steve King (#4)
House Committee on the Judiciary
Subcommittee on Immigration, Citizenship, Refugees,
Border Security, and International Law
April 30, 2008

Question:

My understanding is that there are several different methodologies used for calculating the underutilization of family-based and employment-based green cards that yield a wide range of results. Can you briefly describe these different methodologies?

Answer:

Four different methodologies have been used to calculate the number of unused Family-Sponsored and Employment-Based numbers available for recapture:

1) Of the unused numbers which fell across in the following fiscal year, those which remained unused are recaptured in their original preference category.

2) Of the unused numbers which fell across in the following fiscal year, those which remained unused are recaptured in their fall-across preference category. The grand totals of numbers recaptured under methods 1) and 2) are equal, but the distribution between the Family-Sponsored and Employment-Based Preferences differs.

3) Unused numbers are recaptured in their original preference category, regardless of fall-across or use in the following fiscal year. This method results in the recapture of the greatest amount of unused numbers.

4) Unused numbers are recaptured in their original preference category only up to the Family-Sponsored and Employment-Based minimum annual limits of 226,000 and 140,000 respectively, regardless of fall-across or use in the following fiscal year. Numbers available above the minimum annual limits which were unused are not recaptured.

Questions for the Record Submitted to
Chief of Visa Control and Reporting Division Charles Oppenheim by
Representative Steve King (#5)
House Committee on the Judiciary
Subcommittee on Immigration, Citizenship, Refugees,
Border Security, and International Law
April 30, 2008

Question:

Please provide a spread sheet for each methodology showing the number of available green cards for each preference category compared to the number actually issued in each category for the fiscal years 1992 to 2007. For the methodology contemplated by H.R. 5882, please show how many visas would be recaptured in the first year, and how the bill will impact the utilization of available green card numbers in subsequent years.

Answer:

The spreadsheets are attached.

For the methodology contemplated by H.R. 5882 (i.e. the third method), 231,269 recaptured Family-Sponsored Preference numbers and 326,409 recaptured Employment-Based Preference numbers would become available in the first year. The recaptured numbers in each preference category would be made available once the annual limit and the unused numbers from the previous fiscal year in that category were all used. Recaptured numbers remaining unused in the first year would continue to be made available in subsequent fiscal years until all were used.

Since under INA 203(a)(2) all recaptured Family-Sponsored Preference numbers would be made available to the Family Second Preference, the availability of those numbers would have its greatest impact on immigrant visa operations at Ciudad Juarez which has by far the heaviest demand for Family Second Preference numbers. The availability of recaptured Employment-Based Preference numbers would primarily impact USCIS adjustments of status, which in recent years have accounted for 85 to 90 percent of total Employment-Based Preference number use.

Consular operations abroad could not process and complete this workload under restrictive limited time requirements.

Attachment:
Methodologies used

Scenario 1:

Fiscal Year	Unused Fam. Pref. Numbers	Unused Empl. Pref. Numbers	Fam. Pref. Numbers Avail. for Recapture	Empl. Pref. Numbers Avail. for Recapture
Totals	231,269	506,448	94,723 + unused FY-07	130,490

The Grand Total of Employment Preference Numbers Available for Recapture reflects the subtraction of 180,039 unused Employment Preference numbers from FYs 1999 through 2004 which have already been recaptured and used. It also reflects subtraction of the 111,571 unused Family Preference numbers that fell across to Employment Preference for those fiscal years, remained unused, and are being recaptured as Family Preference numbers. Also, the subtraction of 84,348 unused Employment Preference numbers that fell across to Family and were used as Family numbers.

(METHOD OF CALCULATION: Family and Employment Preference numbers unused in a fiscal year that fell across in the following fiscal year but remained unused are available for recapture in their original preference category, with the exception of those Employment Preference numbers unused in FYs 1999 – 2004 that were already recaptured.) *Numbers which were not used, and then recaptured in their original category.*

Scenario 2:

Fiscal Year	Unused Fam. Pref. Numbers	Unused Empl. Pref. Numbers	Fam. Pref. Numbers Avail. for Recapture	Empl. Pref. Numbers Avail. for Recapture
Totals	231,269	506,448	6,426	218,787 + unused FY-07

The Grand Total of Employment Preference Numbers Available for Recapture reflects the subtraction of 180,039 unused Employment Preference numbers from FYs 1999 through 2004 which have already been recaptured and used. Also, the subtraction of 107,622 numbers that fell across to the Family Preference.

(METHOD OF CALCULATION: Family and Employment Preference numbers unused in a fiscal year that fell across in the following fiscal year but remained unused are available for recapture in their fall-across category, with the exception of those Employment Preference numbers unused in FYs 1999 – 2004 that were already recaptured.) *Numbers which were not used, and then recaptured in the category which they had "fallen" to.*

Scenario 3:

Fiscal Year	Unused Fam. Pref. Numbers	Unused Empl. Pref. Numbers	Fam. Pref. Numbers Avail. for Recapture	Empl. Pref. Numbers Avail. for Recapture
Totals	231,269	506,448	231,269	326,409

The Grand Total of Employment Preference Numbers Available for Recapture reflects the subtraction of all 180,039 unused Employment Preference numbers from FYs 1999 through 2004 which have already been recaptured and used.

(METHOD OF CALCULATION: All Family and Employment Preference numbers unused in a fiscal year are available for recapture regardless of fall-across and use in the following fiscal year, with the exception of those Employment Preference numbers unused in FYs 1999 – 2004 that were already recaptured.) *Actual annual limits, numbers recaptured in the original category regardless of use.*

Scenario 4:

Fiscal Year	Unused Fam. Pref. Numbers	Unused Empl. Pref. Numbers	Fam. Pref. Numbers Avail. for Recapture	Empl. Pref. Numbers Avail. for Recapture
Totals	175,982	385,230	175,982	228,396

The Grand Total of Employment Preference Numbers Available for Recapture reflects the subtraction of all 180,039 unused Employment Preference numbers from FYs 1999 through 2004 which have already been recaptured and used.

(METHOD OF CALCULATION: Family and Employment Preference numbers unused in a fiscal year, only up to the Family and Employment Preference minimum limits of 226,000 and 140,000 respectively, are available for recapture regardless of fall-across and use in the following fiscal year, with the exception of those Employment Preference numbers unused in FYs 1999 – 2004 that were already recaptured.) *Only up to the minimum annual limits, numbers recaptured in the original category regardless of use. (limits could have been higher than the minimum.)*

Scenario 1: **Unused Family and Employment Preference Numbers Available for Recapture, Fiscal Years 1992 – 2007**
(If Unused Numbers that Fall Across are Recaptured in Original Preference Category Only if Still Unused in Following Fiscal Year(s), with the exception of those already recaptured)

Fiscal Year	Unused Fam. Pref. Numbers	Unused Empl. Pref. Numbers	Following FY's Fam. Pref. Limit	Following FY's Empl. Pref. Limit	Fam. Pref. Numbers Avail. for Recapture [1]	Empl. Pref. Numbers Avail. for Recapture [2]
1992	5,435	21,207	232,483 [3]	161,207 [3]	3,213 [5]	0 [5]
1993	3,213	0	226,000	143,213	3,213	0
1994	6,503	29,430	253,721	146,503	0	1,709
1995	0	58,694	311,819	140,000	0	0
1996	0	21,173	226,000	140,000	0	21,173
1997	0	40,710	226,000	140,000	0	40,710
1998	20,906	53,571	226,000	160,906	---[4]	53,571
1999	2,299	98,941	294,601	142,299	---[4]	---[4]
2000	52,074	31,098	226,000	192,074	5,511	---[4]
2001	2,632	5,511	226,000	142,632	0	0 [5]
2002	31,532	0	226,000	171,532	31,532	0 [5]
2003	64,422	88,482	226,000	204,422	47,305	56,950 [5]
2004	8,449	47,305	226,000	148,449	0	0 [5]
2005	3,949	0	226,000	143,949	3,949	0
2006	7,148	10,326	226,000	147,148	0	6,377
2007 [6]	22,707	0	226,000	162,707	0 + ???	0
Totals	**231,269**	**506,448**	---	---	**94,723 + unused FY-07**	**130,490** [7]

NOTE: The Unused Employment Preference Numbers total is that used in calculating the following fiscal year's Family Preference numerical limit, and vice-versa.

[1] The Family Preference Numbers Available for Recapture total represents the unused Family Preference numbers in a fiscal year minus the amount of the following fiscal year's Employment Preference limit above 140,000 that were used or recaptured (with the exception of FY-1992 when there was no fall-across).

[2] The Employment Preference Numbers Available for Recapture total represents the unused Employment Preference numbers in a fiscal year, **minus** (1) the amount of the following fiscal year's Family Preference limit above 226,000 (with the exception of FY-1992 when there was no fall-across), and (2) unused numbers that fell across from Family Preference in the prior fiscal year, remained unused, and are being recaptured in the Family Preference category.

[3] Unused Employment Preference numbers did not fall across to the following fiscal year's Family Preference limit (and vice versa) until FY-1994.

[4] Employment Preference numbers unused in FYs 1999 and 2000 have already been recaptured; therefore, none remain unused.

[5] Of the Employment Preference numbers unused in FYs 2001 – 2004, 50,000 have already been recaptured and used for Schedule A applicants; therefore, only the balance (6,950) remain unused.

[6] All totals for FY-2007 are preliminary and are subject to change.

[7] The Grand Total of Employment Preference Numbers Available for Recapture is shown as 130,490 (not 180,490) since it reflects subtraction of the 50,000 numbers already recaptured from FYs 2001 through 2004. It also reflects subtraction of the 84,348 unused Family Preference numbers that fell across to Employment Preference for those fiscal years, remained unused, and are being recaptured as Family Preference numbers.

(METHOD OF CALCULATION: Family and Employment Preference numbers unused in a fiscal year that fell across in the following fiscal year but remained unused are available for recapture in their original preference category, with the exception of those Employment Preference numbers unused in FYs 1999 – 2004 that were already recaptured.)

Scenario 2: **Unused Family and Employment Preference Numbers Available for Recapture, Fiscal Years 1992 – 2007**
(If Unused Numbers that Fall Across are Recaptured in the Fall-Across Preference Category Only if Still Unused in Following Fiscal Year(s), with the exception of those already recaptured)

Fiscal Year	Unused Fam. Pref. Numbers	Unused Empl. Pref. Numbers	Following FY's Fam. Pref. Limit	Following FY's Empl. Pref. Limit	Fam. Pref. Numbers Avail. for Recapture [1]	Empl. Pref. Numbers Avail. for Recapture [2]
1992	5,435	21,207	232,483 [3]	161,207 [3]	3,213 [3]	0 [3]
1993	3,213	0	226,000	143,213	3,213	0
1994	6,503	29,430	253,721	146,503	0	1,709
1995	0	58,694	311,819	140,000	0	0
1996	0	21,173	226,000	140,000	0	21,173
1997	0	40,710	226,000	140,000	0	40,710
1998	20,906	53,571	226,000	160,906	---[4]	53,571
1999	2,299	98,941	294,601	142,299	---[4]	---[4]
2000	52,074	31,098	226,000	192,074	0	---[4]
2001	2,632	5,511	226,000	142,632	0	5,511 [5]
2002	31,532	0	226,000	171,532	0	0 [5]
2003	64,422	88,482	226,000	204,422	0	88,482 [5]
2004	8,449	47,305	226,000	148,449	0	47,305 [5]
2005	3,949	0	226,000	143,949	0	0
2006	7,148	10,326	226,000	147,148	0	10,326
2007 [6]	22,707	0	226,000	162,707	0	0
Totals	**231,269**	**506,448**	---	---	**6,426**	**218,787 + unused FY-07 [7]**

NOTE: The Unused Employment Preference Numbers total is that used in calculating the following fiscal year's Family Preference numerical limit, and vice-versa.

[1] The Family Preference Numbers Available for Recapture total represents the unused Family Preference numbers in a fiscal year minus the amount of the following fiscal year's Employment Preference limit above 140,000 (with the exception of FY-1992 when there was no fall-across).

[2] The Employment Preference Numbers Available for Recapture total represents the unused Employment Preference numbers in a fiscal year minus the amount of the following fiscal year's Family Preference limit above 226,000 (with the exception of FY-1992 when there was no fall-across).

[3] Unused Employment Preference numbers did not fall across to the following fiscal year's Family Preference limit (and vice versa) until FY-1994.

[4] Employment Preference numbers unused in FYs 1999 and 2000 have already been recaptured; therefore, none remain unused.

[5] Of the 141,298 Employment Preference numbers unused in FYs 2001 – 2004, 50,000 have already been recaptured and used for Schedule A applicants; therefore, only 91,298 remain unused.

[6] All totals for FY-2007 are preliminary and are subject to change.

[7] The Grand Total of Employment Preference Numbers Available for Recapture is shown as 218,787 (not 268,787) since it reflects subtraction of the 50,000 numbers already recaptured from FYs 2001 through 2004.

(METHOD OF CALCULATION: Family and Employment Preference numbers unused in a fiscal year that fell across in the following fiscal year but remained unused are available for recapture in their fall-across category, with the exception of those Employment Preference numbers unused in FYs 1999 – 2004 that were already recaptured.)

Scenario 3: Unused Family and Employment Preference Numbers Available for Recapture, Fiscal Years 1992 – 2007
(If Unused Numbers are Recaptured Regardless of Fall-Across or Use in Following Fiscal Year, with the exception of those already recaptured)

Fiscal Year	Unused Fam. Pref. Numbers	Unused Empl. Pref. Numbers	Following FY's Fam. Pref. Limit	Following FY's Empl. Pref. Limit	Fam. Pref. Numbers Avail. for Recapture [1]	Empl. Pref. Numbers Avail. for Recapture [2]
1992	5,435	21,207	232,483	161,207	5,435	21,207
1993	3,213	0	226,000	143,213	3,213	0
1994	6,503	29,430	253,721	146,503	6,503	29,430
1995	0	58,694	311,819	140,000	0	58,694
1996	0	21,173	226,000	140,000	0	21,173
1997	0	40,710	226,000	140,000	0	40,710
1998	20,906	53,571	226,000	160,906	20,906	53,571
1999	2,299	98,941	294,601	142,299	2,299	---[3]
2000	52,074	31,098	226,000	192,074	52,074	---[3]
2001	2,632	5,511	226,000	142,632	2,632	5,511 [4]
2002	31,532	0	226,000	171,532	31,532	0 [4]
2003	64,422	88,482	226,000	204,422	64,422	88,482 [4]
2004	8,449	47,305	226,000	148,449	8,449	47,305 [4]
2005	3,949	0	226,000	143,949	3,949	0
2006	7,148	10,326	226,000	147,148	7,148	10,326
2007 [5]	22,707	0	226,000	162,707	22,707	0
Totals	**231,269**	**506,448**	---	---	**231,269**	**326,409** [6]

NOTE: The Unused Employment Preference Numbers total is that used in calculating the following fiscal year's Family Preference numerical limit, and vice-versa.

[1] The Family Preference Numbers Available for Recapture total represents the unused Family Preference numbers in a fiscal year, regardless of fall-across to and number use in the Employment Preference in the following fiscal year.

[2] The Employment Preference Numbers Available for Recapture total represents the unused Employment Preference numbers in a fiscal year, regardless of fall-across to and number use in the Family Preference in the following fiscal year (with the exception of those unused Employment Preference numbers already recaptured).

[3] Employment Preference numbers unused in FYs 1999 and 2000 have already been recaptured; therefore, none remain unused.

[4] Of the 141,298 Employment Preference numbers unused in FYs 2001 through 2004, 50,000 have already been recaptured and used for Schedule A applicants; therefore, only the balance (91,298) remain unused.

[5] All totals for FY-2007 are preliminary and are subject to change.

[6] The Grand Total of Employment Preference Numbers Available for Recapture is shown as 326,409 (not 376,409), since it reflects subtraction of the 50,000 numbers already recaptured from FYs 2001 through 2004.

(METHOD OF CALCULATION: All Family and Employment Preference numbers unused in a fiscal year are available for recapture regardless of fall-across and use in the following fiscal year, with the exception of those Employment Preference numbers unused in FYs 1999 – 2004 that were already recaptured.)

Scenario 4: Unused Family and Employment Preference Numbers Available for Recapture, Fiscal Years 1992 – 2007
(If Unused Numbers Are Recaptured Up to the 226,000 Family Preference and 140,000 Employment Preference Minimums Only Regardless of Fall-Across or Use in Following Fiscal Year, with the exception of those already recaptured)

Fiscal Year	Unused Fam. Pref. Numbers	Unused Empl. Pref. Numbers	Following FY's Fam. Pref. Limit	Following FY's Empl. Pref. Limit	Fam. Pref. Numbers Avail. for Recapture [1]	Empl. Pref. Numbers Avail. for Recapture [2]
1992	5,435	21,207	226,000	140,000	5,435	21,207
1993	0	0	226,000	140,000	0	0
1994	6,503	26,217	226,000	140,000	6,503	26,217
1995	0	52,191	226,000	140,000	0	52,191
1996	0	21,173	226,000	140,000	0	21,173
1997	0	40,710	226,000	140,000	0	40,710
1998	20,906	53,571	226,000	140,000	20,906	53,571
1999	2,299	78,035	226,000	140,000	2,299	---[3]
2000	0	28,799	226,000	140,000	0	---[3]
2001	2,632	0	226,000	140,000	2,632	0 [4]
2002	31,532	0	226,000	140,000	31,532	0 [4]
2003	64,422	56,950	226,000	140,000	64,422	56,950 [5]
2004	8,449	0	226,000	140,000	8,449	0 [4]
2005	3,949	0	226,000	140,000	3,949	0
2006	7,148	6,377	226,000	140,000	7,148	6,377
2007 [5]	22,707	0	226,000	140,000	22,707	0
Totals	**175,982**	**385,230**	---	---	**175,982**	**228,396** [6]

NOTE: For purposes of this table, the Family and Employment Preference numerical limits for each fiscal year are assumed to be 226,000 and 140,000 respectively.

[1] The Family Preference Numbers Available for Recapture total represents the difference between 226,000 and the Family Preference numbers used in a fiscal year, regardless of fall-across to and number use in the Employment Preference in the following fiscal year.

[2] The Employment Preference Numbers Available for Recapture total represents the difference between 140,000 and the Employment Preference numbers used in a fiscal year, regardless of fall-across to and number use in the Family Preference in the following fiscal year (with the exception of those unused Employment Preference numbers already recaptured).

[3] Employment Preference numbers unused in FYs 1999 and 2000 have already been recaptured; therefore, none remain unused.

[4] Of the Employment Preference numbers unused in FYs 2001 through 2004, 50,000 have already been recaptured and used for Schedule A applicants, therefore, only the balance remain unused.

[5] All totals for FY-2007 are preliminary and are subject to change.

[6] The Grand Total of Employment Preference Numbers Available for Recapture is shown as 228,396 (not 278,396), since it reflects subtraction of the 50,000 numbers already recaptured from FYs 2001 through 2004.

(METHOD OF CALCULATION: Family and Employment Preference numbers unused in a fiscal year, only up to the Family and Employment Preference minimum limits of 226,000 and 140,000 respectively, are available for recapture regardless of fall-across and use in the following fiscal year, with the exception of those Employment Preference numbers unused in FYs 1999 – 2004 that were already recaptured.)

LETTER FROM MICHAEL DOUGHERTY, CIS OMBUDSMAN, U.S. DEPARTMENT OF HOMELAND SECURITY.

Office of the
Citizenship and Immigration Services Ombudsman

U.S. Department of Homeland Security
Mail Stop 1225
Washington, D.C. 20528-1225

April 30, 2008

The Honorable Zoe Lofgren
Chairwoman
Subcommittee on Immigration, Citizenship,
Refugees, Border Security, & International Law
Committee on the Judiciary
Washington, DC 20515

Dear Chairwoman Lofgren:

Attached is the Department of Homeland Security, Citizenship & Immigration Services Ombudsman's 2007 Annual Report. Please consider adding it as a statement for the record with regard to the hearing, "Wasted Visas, Growing Backlog" to be held today.

As you know, my office will be submitting our 2008 Annual Report to the Committee on June 30. It will build on comments in the Ombudsman's 2007 Annual Report and contain observations concerning the recent increase in application backlogs, the unusual movement in priority dates this past year, and on the interagency "Priority Date" meetings that have been hosted by the our office since August 2005.

My office is available at any time to provide a briefing on the 2007 Annual Report, and on the 2008 Annual Report, once it is issued. If interested, your staff may contact me at 202-357-8100. Thank you for your time and consideration.

Sincerely,

Michael Dougherty
CIS Ombudsman

CC: Honorable Steve King
Ranking Member

Email: cisombudsman@dhs.gov **Web: http://www.dhs.gov/cisombudsman**

Note: The document of the U.S. Department of Homeland Security entitled: Citizenship and Immigration Services Ombudsman, Annual Report 2007, submitted by Michael Dougherty, is available at the Subcommittee and can also be accessed at: http://www.dhs.gov/xlibrary/assets/CISOMB_Annual_Report_2007.pdf

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