

**TESTIMONY OF
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BEFORE THE

**COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON IMMIGRATION AND CLAIMS
U.S. HOUSE OF REPRESENTATIVES**

CONCERNING

**IMMIGRATION REFORM: RESTRUCTURING THE IMMIGRATION AND
NATURALIZATION SERVICE**

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Mr. Chairman, I thank you for inviting me to speak before the Committee today on the issue of immigration reform and the need to reform the Immigration and Naturalization Service (INS). As the managing partner of the business immigration group at Shaw Pittman LLP, I represent a number of large businesses in a variety of industry sectors, including in particular the communications and information technology arena. In spite of efforts by INS decision makers at both the agency's headquarters and its field offices, we have seen a significant increase in the number of case backlogs at the INS, and have witnessed a surge of inefficiency at the agency over the past several years. As the number of visa applications filed with the INS continues to grow, the need to reform the current structure of the agency becomes increasingly apparent.

The traditional mission of the INS has been to enforce the U.S. immigration laws. The management of those laws has two principal components: enforcement (to deter illegal immigration), and service (to facilitate legal immigration). In order to meet the needs of the business and family communities, the service component requires a comprehensive overhaul.

This presentation outlines the key elements of the challenges to service that our clients in the business community have faced in recent years, and includes recommendations in five key areas for improvement of the service component.

INS Backlogs are Significantly Impacting the Business Community.

The U.S. business community, in particular the sectors involved in scientific or technical services, has grown dramatically in the past 10 years. Even with the recent softening of the economy, key sectors such as information technology (IT) continue to expand and develop innovations. To address the ongoing demand for U.S. products and services, U.S. businesses have engaged in aggressive recruitment programs, focusing on U.S.-based college recruitment and open market hiring. They have also expanded training programs, in particular for technical fields. We see our established IT clients dedicating two to six percent of their revenues to training programs.

The recruitment efforts of these companies have yielded a diverse work force, including both U.S. and foreign workers. The foreign professionals these companies recruit typically have expertise in specialty areas that fill critical skill gaps and project needs. The principal problem U.S. employers face when attempting to hire these workers is the processing of their visa petitions.

Delays in INS processing of nonimmigrant and immigrant applications and petitions have reached unprecedented highs in the past year. At one point in the past year, for example, H-1B petition adjudication, historically completed in four to six weeks, stalled to over four months. In addition, the adjudication of routine visa petitions increasingly includes INS requests for additional evidence that are redundant or inappropriate (e.g., request for pay stubs to prove ongoing employment in cases where the same employer is the petitioner and attests in the petition to that ongoing employment). Although the agency is attempting to produce a higher volume of cases, the constantly growing case load, when combined with systemic inefficiencies, has led to consistent problems in routine visa processing.

Some real-world examples of common problems U.S. employers have faced recently are:

1. F-1 to H-1B/Gap in Work Authorization due to INS Delays: A foreign worker with a master's degree in management information systems joined Company X in August 2000 on an F-1 practical training visa. The worker's visa was due to expire in December 2000. In response to client needs, the company placed the worker on a multi-million dollar project to develop a web-enabled automated financial management system for a state agency, as a Team Leader. The company filed for conversion of the worker's visa status from F-1 to H-1B status in October 2000, allowing 60 days for the INS to approve the petition (60 days is the response time INS cited as the norm for H-1B adjudication at the time). INS delays resulted in the case being stalled until April 2001. The delay forced the company to place the Team Leader on leave for several months, interrupting a vital project on which that worker had critical know-how, and creating a serious client relations issue with the state agency. In response to the employer's inquiries about the case, the INS stated that the volume it faced prevented it from accelerating processing of any case, even when, as here, the case processing lagged behind the normal 60-day adjudication period.
2. L-1 to H-1B/Lateral Start Dates Delayed for Months: A rapidly-growing telecommunications provider recruited a senior executive from the U.S. office of a multinational competitor. The executive held an L-1 visa, and so needed a new H-1B visa to be approved with the new employer before he could begin work. The company filed his petition with the INS in March 2000, expecting that the INS would adjudicate the case within the 60-day period that the agency continued to cite as normal for processing of H-1B petitions. Soon afterward, the company announced that the executive would join its operations in May 2000. The INS failed to conclude processing of the petition until July 2000, however, a total adjudication period of 120 days. Thus the company was faced with an unexpected delay of two additional months, creating the risk of a stock price decline as well as operational challenges. Neither Congressional representatives nor the INS Regional Service Center Liaison were able to facilitate a more expedited processing.
3. Residency: A large IT company sponsored the Director of its Global Customer Support Center for permanent residency (at the time, the Director held an H-1B visa). The Department of Labor certified the labor certification application within a few months. INS took four years to adjudicate the immigrant petition and adjustment of status application. While the Director was able to continue working on his H-1B work permit and, later, the adjustment-authorized Employment Authorization Document (EAD), it was only due to a significant and costly effort involving assistance by multiple Congressional offices and a variety of personnel at INS headquarters that the EAD was issued in time to avoid a gap in work authorization. Although legislation passed last year by Congress would now help to insure that a gap in work authorization does not occur, the length of the processing in this example reflects how oppressive the lead time in concluding the process for U.S. residency has become.

As the above examples illustrate, the backlogs and significant processing delays at the INS have real-world effects on the foreign work force of U.S. companies and may severely impact the business community. Clear problems exist at the INS that must be addressed in order to provide for a streamlined system, and allow for a smoother, more timely adjudication of visas processed by the INS. The enhanced efficiency will benefit both the business and family communities.

A System of Clear Accountability Must Be Established at the INS.

Under the current structure, there is a lack of accountability for employee actions at the INS. As no clear chain of command has been established between policy makers at INS headquarters and INS employees at field offices, INS employees are left with little guidance on policy implementation. Periodically, INS headquarters will issue field guidance regarding standards for adjudication or clarification of newly passed statutes. However, the field offices often develop divergent policies, which results in differing standards throughout the agency. The field offices often fail to implement a uniform policy regarding “Requests for Evidence” in standard cases, and lack uniform target timetables for concluding adjudication of petitions.

Making the situation worse is an artificial “deer in the headlights” sentiment held by field office staff, who have commented that they are afraid to contravene the policies that INS headquarters advocates. In reality, they do not seem to have a clear sense of what the central office mandates are. This confusion results in increased delays and greater backlogs throughout the agency.

The INS Must Be Able to Manage Competing Priorities.

In recent years, the focus of INS has been to select one priority at a time -- e.g., naturalization cases in 1999, adjustment of status cases in 2001. The agency will then devote significant resources to that single priority, leaving other areas insufficiently staffed or ineffectively managed. As a result, other areas, although equally critical to the business and family communities, have been neglected, and backlogs have exploded in those neglected areas.

This approach of shifting priorities has led to unprecedented backlogs in areas that traditionally were always current, such as nonimmigrant work visas. The agency has shuffled staff at various times as it “chased” the most dramatic backlogs. Although clearly attempting to identify solutions to the increasingly overwhelming case load, the agency has in fact ended up providing “band-aid fixes” to single areas rather than devising an overall management plan to keep all adjudication areas consistently moving.

The INS Must Strengthen its Intra-Agency Communication.

Related to the lack of a clear chain of command and accountability is the unreliability of the communication systems between agency offices. In part, this problem is a result of the structural deficiency and the failure of the INS to delineate clear roles and responsibilities between headquarters and the various Service Centers and District Offices. The communication breakdown is also due to INS reliance on an outdated communication system, where various

databases are not integrated and hard file transfers must still be made (by mail) in order to facilitate processing. There is no question that these communication deficiencies contribute to delays in processing, and create frustration among the ranks of the work force at INS.

The Inconsistent Application of Legal Standards Cannot Continue.

The priority shifting described above has led to a lack of close attention to routine visa categories, in particular the nonimmigrant work visa classifications. Accordingly, INS field offices have taken greater latitude in implementing the regulations, which have not been updated promptly to accommodate changes in statutes (e.g., the regulations corresponding to the American Competitiveness in the 21st Century Act, AC 21, have yet to be published). While limited field guidance is issued periodically, the field offices typically develop their own approach to implementation. The result is an inconsistent application of key legal standards, and an invitation for users to forum shop. For example, at various times, specific Service Centers have been reluctant to accept academic equivalency evaluations from reputable credentials agencies, while others have been comfortable with them. The clearest guidance from INS headquarters on the propriety of such evaluations dates back to 1995.

There is a Need for Enhanced Professionalism and Access to Information.

The burden of the large volume has demotivated the agency staff, which considers itself largely “max’ed out.” The consistent backlogs are accepted as a fact of life at the field offices, where managers and staff focus on how many cases are acted upon, not how many are left in the pipeline. As a result, the attitude of many field office managers is unreceptive. Even when a field office manager is willing to assist, the lack of a system for managing the volume makes it difficult to obtain a timely solution or conclusion of the processing.

Similarly, except in the new program for Premium Processing, where the customer must pay an additional \$1,000 fee to assure a timely processing (15 days is the guideline) of certain types of nonimmigrant cases, there is no effective system for customers to check on the status of their cases. Status checks must still be conducted by telephone for Service Center petitions, via a strained phone system that requires dozens of attempts simply to reach a recorded message. Status checks for District Office applications typically require the customer to appear in person.

INS headquarters, which could provide a central clearinghouse for user problems, does not have a reliable vehicle to communicate with field offices when a case is being mishandled or an emergent case requires special handling. The liaison offices at INS headquarters are often ill-equipped to press for solutions to emergent cases that require special handling. Even basic communication of requests can be stalled while customers press to reach one of the headquarter officers, as voice mail boxes of the requisite personnel are frequently full.

Solutions -- First Steps

The Service and Enforcement Arms of the Agency Must Be Separated.

There is a fairly widespread consensus that INS's service functions (family- and employment-based immigrant petitions, nonimmigrant visa changes of status and extensions of stay, naturalization applications, refugee and asylum applications, and service center operations) should be split from enforcement (border patrol, investigations, detention and deportation, and intelligence). Inspections, which involves aspects of both service and enforcement, requires special consideration, and may be most suited to being staffed in part by officers from both arenas.

A split would allow clearer lines of authority to be established in each arena, with budgetary allocations more clearly segregated. The focus of the service arm of the INS must continue to be centered on the facilitation of the entry of valuable foreign nationals who will serve as an asset to our nation. In contrast, the enforcement side of the INS must monitor border control and handle investigations, removal and deportation of foreign nationals in violation of the law. A split of the two functions would serve to create a shift in the attitude of the agency bureau that would administer the cases of the business and family communities.

As the service and enforcement functions of the INS are based on two very different goals, the creation of two separate bureaus, each reporting to the Justice Department, would allow defined-goal enterprise development to occur. The lines of authority would be unambiguous, and the bureau dedicated to the service function would then be able to develop a modernized communication infrastructure and records management system to facilitate service.

Other Structural Changes Would Enhance Overall Service.

Allocation of responsibility within field offices should be reconsidered, with an eye to enhancing service and efficiency. Service Centers (SCs), traditionally the agency's "jewel in the crown," should not be overloaded. A limitation of SC responsibilities to nonimmigrant applications and employment-based immigrant cases may be optimal.

District Offices, which now handle all family-based one-step cases, should handle all family-based petitions and adjustment of status applications. Naturalization could be returned to District Offices with a closer monitoring of this program, to eliminate the continuous delays and avoid a repeat of the slow-downs which resulted from the Citizenship America initiative. (Prior to that time, naturalization typically moved within six to eight months at the District Offices.) Refugee, asylum and current special program cases (TPS, NACARA, etc.) can remain at District Offices.

Any new special program legislation should include an assessment of the person hours and resources required to process those cases, and allow the District Offices or INS headquarters to establish Application Support Centers to process those cases, typically for the limited window of time allowed for the programs' applications to be made.

Management Techniques Need to be Implemented at Each Level of the INS Service Arm.

Requisite top-down management techniques need to be made part of the INS service arm. Managers must establish firm lines of authority and communication, with clear allocation of roles and responsibility at each level of staff. Managers must have frequent periodic meetings with their staff, to discuss improvements, enhancements and refinements, and to determine what is working and what is not.

Changes in policy must be clearly communicated throughout the organization, from headquarters to field offices, and, in turn, from field office managers to staff. Consistency in adjudication must be made the norm, with clear targets in timelines for processing and required reporting to headquarters when backlogs exceed that timeline/deadline, so that resources may be allocated to curtail the backlog before it becomes unmanageable. Field offices must be graded not only on the volume of cases acted upon, but on the pipeline of backlogged cases.

Consistent Timelines Must Be Implemented.

As mandated in AC 21, INS headquarters must impose a timeline of 30 days on all nonimmigrant applications, and 180 days in all immigrant petitions and applications. In nonimmigrant cases, requests for evidence (RFEs), when necessary, should be required to be issued within 15 days of receipt of the case, with adjudication concluding within 15 days of receipt of the response, thus insuring that RFEs do not slow down the overall adjudication process. Similarly, prompt timelines should be established in immigrant RFE contexts.

Naturalization applications should be held to a similar timetable, most likely 90 days from filing to the examination interview, with an additional 30 days to the swearing-in ceremony. Timelines must be enforced across field offices, to lead to a consistency in processing.

The INS Needs A Modernized Infrastructure for Communication.

INS databases must be upgraded to web-enabled systems with access across offices in order to allow for greater efficiency in communication. Better intra-agency communication will result in clearer lines of decision-making and an overall decrease in processing times.

Individual file data progress and tracking needs to be maintained on a comprehensive database that may be checked across INS offices, with milestones and comments identified in the database. Users should be able to check progress on filings by accessing the Internet, with file numbers provided to them by email notification upon receipt of cases. Receipt notices should be eliminated absent special circumstances. Approval of cases or RFEs should be communicated by email, with hard copies mailed out as a follow up.

Email and telephone access to liaison offices needs to be upgraded, to insure a reasonable response time to all initial requests for special handling (for those cases which necessitate special handling due to emergent circumstances). All changes in policy or processing requirements should be announced on the INS Web site.

There is a Need for a Community Liaison and Greater Public Access.

A task force should be created with representatives of the immigration community, including companies, trade associations, affected individuals with family- and employment-based cases and selected immigration practitioners. The task force should meet with policy makers on the service side of INS to provide feedback and generate ideas for initiatives to enhance service.

For day-to-day activity, INS headquarters should provide effective liaison with the field. The liaison offices should be staffed with knowledgeable personnel who can screen requests from users, and assist users with legitimate problem scenarios promptly and efficiently. The communications infrastructure should include a system for 24-hour response from the liaison office to assist with user requests.

Concluding Thoughts: Focus of the Changes

Critical to a successful reengineering of the INS is a goals-oriented approach. Service needs to be enhanced through a shift in attitude, stronger leadership, clear roles and responsibilities, and the elimination of backlogs.

Proposals suggesting a complete gutting of INS are unrealistic, as service, to be successful, requires personnel fully educated in an area of highly complex specialization. The current personnel at the agency have that know-how, but need organizational process, system-wide reengineering in order to provide effective service. Restructuring of the INS should accordingly be accomplished by capitalizing on existing personnel's know-how but assigning much clearer goals. A penalties and rewards system based on results and customer service is similarly mandatory.

The budgetary aspects of the reengineering process will be to assess the budgetary needs of the service arm of INS. While INS's budget has increased almost fivefold in the last decade, from \$1.5 billion in FY 1993 to \$5 billion in FY 2001, adjudication of petitions and applications is funded almost exclusively through filing fees. Funding for enhancements to technology, management support tools and, as needed, additional staff, will need to be assessed by a coordinated group of managers from field offices and headquarters. Outside consulting services should be limited, as both Booz-Allen and Price Waterhouse already have provided exhaustive reports.

Mr. Chairman, the above discussion provides an overview of the need to restructure the INS, with suggestions for implementing change. By removing the barriers to better service, we can provide for a smoother, more efficient immigration process, which will clearly benefit businesses that rely on its foreign workers, as well as family-sponsored candidates for immigration. For the agency to effectively meet its mandate in both the service and enforcement arenas, it needs to streamline its processes and maximize the effectiveness of its staff. We provide this statement to assist the Committee in its effort to achieve these critical goals.