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**USCIS Response to the Citizenship and  
Immigration Services Ombudsman's  
2022 Annual Report to Congress**

# A Message from the Director

It is my pleasure to present the U.S. Citizenship and Immigration Services (USCIS) response to the Office of Citizenship and Immigration Services Ombudsman's (CIS Ombudsman) 2022 Annual Report to Congress. Our response addresses concerns raised in the Annual Report and highlights some of the agency's many accomplishments during the reporting period.



In the Annual Report, the CIS Ombudsman discusses many topics of public interest, including:

- Impact of backlogs;
- The need for employment authorization renewal flexibilities;
- Increasing accessibilities to obtain advance parole documents;
- Improving the expedite process;
- Affirmative asylum backlog;
- Barriers facing asylum applicants in obtaining employment authorization during the removal proceeding process;
- USCIS' digital strategy; and
- The U Nonimmigrant Status Bona Fide Determination Process.

The Annual Report also highlights two recommendations the CIS Ombudsman made this year: Addressing the Challenges of the Current USCIS Fee-Setting Structure and Improving USCIS' Form I-129 Notification Procedures.

I appreciate the CIS Ombudsman's analysis and recognition of USCIS efforts to reduce the backlog. The Annual Report and studies like it provide the public an opportunity to better understand the challenges USCIS faces and the innovative efforts and hard work our dedicated employees are engaging in to meet those challenges. To accomplish our objectives, we need opportunities like this for an external review of our work, so I want to thank the CIS Ombudsman and staff for their assistance and recommendations. USCIS has made progress addressing our backlogs and always stands ready to work with the CIS Ombudsman to ensure we provide the best service possible to our applicants, stakeholders, and the American public.

Sincerely,

A handwritten signature in black ink that reads "Ur M. Jaddou". The signature is fluid and cursive, with a long horizontal line extending from the end.

Ur M. Jaddou  
Director



**U.S. Citizenship  
and Immigration  
Services**

Nathaniel Stiefel, Acting Ombudsman  
Citizenship and Immigration Services Ombudsman  
U.S. Department of Homeland Security  
Washington, DC 20528

Dear Mr. Stiefel:

Thank you for the thorough analysis in the Office of the Citizenship and Immigration Services Ombudsman's 2022 Annual Report to Congress. I value your thoughtful and comprehensive assessment of U.S. Citizenship and Immigration Services' (USCIS) processes, policies, and operations.

I reviewed the 2022 Annual Report and discussed your findings with my senior leadership team. We appreciate your analysis and proposed recommendations. My team and I concur with many of the findings.

As detailed in the 2022 Annual Report, current backlogs and their cascading effects undoubtedly add frustration to those who wait for USCIS to adjudicate their applications and petitions. To reduce our backlog, USCIS is implementing an accelerated hiring strategy and increasing efficiency through technological enhancements and regulatory and policy changes. We are also currently working on a new fee rule that reflects the agency's current costs of operations while also looking into areas where appropriations can assist our humanitarian programs, and our backlog reduction plan.

Like you, I seek to reduce the delays and burdens many of our applicants face when renewing their employment authorization using Form I-765, Application for Employment Authorization. As your report stated and our response shows, USCIS has already taken many steps to address this backlog, and we continue to look for solutions.

I appreciate your thoughtful recommendations on how to improve the processing of advance parole documents and expedite requests. When approved, Form I-131, Application for Travel Document, conveys an important benefit to our applicants and we want to make sure every adjudication is performed properly and efficiently. I agree there is room for improvement in processing expedited requests as well, especially considering the high volume of such requests addressed by the agency.

As our response shows, USCIS continues to mitigate the affirmative asylum backlog. I share your concerns regarding funding challenges for this and other important humanitarian work. However, I believe USCIS is on the right path to reducing the backlog by regularly bringing together senior leaders across the agency to develop additional, cross-cutting actions while offering support for implementation of actions already identified, including hiring and technology-based efficiencies.

We are grateful that you and your team have considered ideas to facilitate a more effective process for asylum applicants in removal proceedings to obtain an Employment Authorization Document (EAD). I share your concerns with the frustration applicants must feel when communicating between different agencies. USCIS is committed to alleviating these frustrations and is implementing multiple measures to that end, as our response shows.

Your optimism regarding USCIS' modernization process is welcomed and appreciated. Leveraging technology enhances our efficiency, improves the integrity and quality of our decisions, and strengthens workforce morale. Our digital accomplishments in Fiscal Year (FY) 2022 were considerable and are a precursor to what we hope and expect to accomplish in FY 2023.

Finally, thank you for your article on the great work USCIS has accomplished with the U Nonimmigrant Status Bona Fide Determination Process. Admittedly, there is still much to be done to fully reduce the backlog of this extremely important and sensitive adjudication workload. USCIS will continue to look for ways to reduce that backlog, which includes making Form I-918 a priority form that will be addressed in USCIS' backlog reduction efforts.

It is my pleasure to present USCIS' response to the Annual Report for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Ur M. Jaddou", with a long horizontal flourish extending to the right.

Ur M. Jaddou  
Director

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# I. Legislative Requirement

This document responds to reporting requirements set forth in the Homeland Security Act of 2002, codified at 6 U.S.C. § 272, which provides in relevant part:

- (f) Responsibilities of the Bureau of Citizenship and Immigration Services—The Director of the Bureau of Citizenship and Immigration Services shall establish procedures requiring a formal response to all recommendations submitted to such director by the Ombudsman within 3 months after submission to such director.<sup>1</sup>

# II. Introduction

U.S. Citizenship and Immigration Services (USCIS) thanks the Office of the Citizenship and Immigration Services Ombudsman (CIS Ombudsman) for the thoughtful, wide-ranging analysis found in its 2022 Annual Report to Congress. USCIS appreciates the CIS Ombudsman’s review of our agency’s operations and welcomes the opportunity to respond to concerns and recommendations found in the annual report. Where appropriate, the response also highlights several of USCIS’ accomplishments in improving procedures and applicant services from Fiscal Year (FY) 2022 as well as more recent accomplishments.

# III. The Cascading Impact of Backlogs: Year In Review

This year’s Annual Report is primarily devoted to investigating agency backlogs and processing times. The report highlights a need to address cascading challenges that backlogs create. The report identifies additional steps to mitigate or even eliminate some of the most intransigent problems associated with case backlogs. The report stated that reducing unprecedented backlogs down to a manageable level requires USCIS to apply efficiencies and streamlined processing while preserving integrity. Importantly, the report acknowledged this cannot be done without increasing both staff and funding.

The CIS Ombudsman recently issued a set of recommendations about USCIS’ current fee-setting processes. The study, referenced *infra*, discusses several options the agency can take to maintain a steady stream of revenue that allows it to manage unpredictable workloads. In FY 2022, Congress allocated funding specifically for application processing and backlog reduction, as well as the major humanitarian effort to resettle Afghan allies, which has allowed USCIS to hire additional adjudicators and other support staff, expand use of overtime, and invest in information technology to promote more efficient case processing. This funding stream must continue—to give the agency the resources it needs without overburdening future applicants and petitioners. USCIS submitted a [formal response](#) to the CIS Ombudsman’s specific recommendations on this issue.

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<sup>1</sup> Pub. L. No. 107-296, tit. IV, § 452, 116 Stat. 2135, 2197 (2002), Homeland Security Act of 2002, online at [http://www.dhs.gov/xlibrary/assets/hr\\_5005\\_enr.pdf](http://www.dhs.gov/xlibrary/assets/hr_5005_enr.pdf)

To have a reliable stream of fees and other sources of revenue sufficient to address infrastructure needs and alleviate increasing backlogs, the CIS Ombudsman provided the following additional recommendations (USCIS responses are located below each recommendation):

**1. The agency needs to maintain a steady stream of revenue that allows it to manage its unpredictable workload.**

USCIS recognizes fees need to reflect current conditions and costs inherent in meeting processing goals. As such, the agency has published a proposed fee rule for public comment beginning on January 4, 2023, and the public comment period closed on March 13, 2023. The new fee rule balances the needs of the agency with the goal of promoting access to the immigration system.

In accordance with the Chief Financial Officers (CFO) Act of 1990 and Office of Management and Budget (OMB) Circular A-25 (User Charges), USCIS conducts a fee review biennially. The fee schedule is developed from this review to yield “full cost recovery.” The total of the fees collected under the proposed fees and projected level of activity is intended to meet USCIS operating costs over the time period of the fee review. USCIS’ last fee rule for the period of FY 2019/2020 was enjoined by a federal court in 2021, and the rule’s fee schedule is not being applied. Thus, USCIS continues to operate under the fee schedule approved in the FY 2016/2017 Fee Rule, more than six and half years ago. These fees do not reflect the current economic situation or the full operational cost of USCIS.

Since Spring 2021, USCIS has assessed policy and operational needs, current costs, and projected revenue needs—otherwise referred to as the fee review—and drafted a proposed fee rule that reflects current operational costs. The proposed fee rule was published in the Federal Register on January 4, 2023. After consideration of public comments, USCIS will aim to publish a final fee rule as quickly as possible. At that time, the fees established will provide USCIS with a fee structure that better represents current operational costs.

USCIS concurs with the CIS Ombudsman recommendation that congressional funding continue to support not only affirmative asylum backlog reduction efforts and refugee processing, but also all humanitarian workloads under the umbrella of the Refugee, Asylum and International Operations Directorate (RAIO), including humanitarian parole and international operations. The FY 2023 President’s Budget Request included appropriated funds in support of:

- Expanding the current international footprint at existing and new locations as part of USCIS’ ongoing comprehensive analysis.
- Augmenting staffing and other resources from FY 2021 to significantly grow the U.S. Refugee Admissions Program (USRAP).
  - In FY 2022, USCIS completed 16,634 initial refugee interviews consisting of 44,081 individuals, more than 4 times the number of refugee interviews completed during the previous fiscal year.

- Investing in technology for:
  - More effective tracking of refugee applicant cases, enabling USCIS staff to identify actions necessary to move refugee applicants to the next step in the process and to receive decisions more efficiently;
  - Developing the capability to electronically intake and process Form I-131 parole requests; and
  - Leveraging video teleconference capabilities for certain refugee interviews.

The USCIS FY 2023 budget request also included funding for resources necessary to administer Southwest border-related workloads without diverting USCIS Asylum Division staff from affirmative asylum application processing. The request included funding to add 2,035 USCIS positions to support the expansion of case processing under the *Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers*, 87 Fed. Reg. 18078 (Mar. 29, 2022) (commonly referred to as the “Asylum Processing Interim Final Rule”). The request included 1,498 asylum field office positions and accompanying positions in USCIS.

The FY 2023 Omnibus appropriation legislation (Pub. L. 117-328, enacted December 29, 2022) did not fully fund the USCIS appropriations request in the President’s Budget as described above, but it provided over \$133 million to support refugee processing and international operations. USCIS will continue efforts to obtain necessary funding through the budget process.

**2. Fees must also reflect current conditions and especially the current costs inherent in meeting processing goals. Only then can backlogs and their associated impacts cease to exist.**

USCIS is committed to eliminating its backlogs through a strategic approach that includes maintaining a steady stream of revenue. Consistent with the Emergency Stopgap USCIS Stabilization Act, Title I, Div. D of Public Law 116-159 (8 U.S.C. 1356 note) (“USCIS Stabilization Act”) enacted October 1, 2020, the agency is actively exploring options for *expanding* premium processing to different form types. In March 2022, USCIS published a rule that codified new premium processing fees and processing timeframes for new immigration benefit requests, consistent with the conditions and eligibility requirements set forth by the USCIS Stabilization Act. The rule expanded premium processing eligibility to the remaining Form I-140 (Immigrant Petition for Alien Workers) categories, Form I-539 (Application to Extend/Change Nonimmigrant Status), and Form I-765 (Application for Employment Authorization). Although USCIS has not made premium processing available to all of these additional categories, the revenue that will eventually come from the expansion will enable the agency to build, expand, and support our existing infrastructure and staff.

USCIS concurs that current needs should be assessed as part of its backlog reduction efforts. In addition to hiring, USCIS is focused on improving the customer experience and workload flexibility through technology solutions, leveraging systems-based verification



processes to allow us to focus officer resources on truly adjudicative tasks, and leveraging overtime to focus on backload reduction in critical caseloads.

## **IV. The Need for More Flexibility in Renewing Employment Authorization**

In their annual report to Congress, the CIS Ombudsman notes delays applicants face in renewing their EADs. According to the CIS Ombudsman, delays significantly increased since 2019, the last time their office reported on the EAD program.

The CIS Ombudsman commends USCIS for progress made through changes to regulations, policy, and operations. However, the CIS Ombudsman suggests more action is needed and makes the following recommendations (USCIS responses are located below each recommendation):

- 1. Build on existing automatic extension periods to allow for uninterrupted work authorization while waiting for USCIS to adjudicate a renewal EAD application.**
  - a. USCIS should consider developing a regulation that permanently implements a longer automatic extension period, beyond 180 days, so that delays in adjudicating EAD applications do not interrupt businesses or lead to job losses. Even if USCIS ultimately meets its stated goal for processing EADs in 3 months by the end of FY 2023, backlogs may occur again in the future, as historically they have done since the agency was created.**
  - b. In addition, USCIS can evaluate the success of the Temporary Final Rule (TFR) as it relates to these issues, as well as the progress it makes toward its processing time goals for FY 2023. Once these factors are evaluated, USCIS can then consider proposing a permanent, longer-term automatic extension period.**

As part of its regulatory agenda-setting process, USCIS will explore permanent improvements to the EAD renewal process that may be pursued through regulatory change, as suggested by the CIS Ombudsman. To that end, USCIS continues to evaluate impacts of the TFR and public comments received in assessing possible solutions.

- 2. Provide better options for nonimmigrant spouses to renew their employment authorization. For example:**
  - a. USCIS could prioritize Forms I-539 by H-4 dependents for premium processing, thus adjudicating the extension of stay more quickly and potentially making this auto-extension period for the EAD a reality. However, USCIS will be phasing in premium processing only as resources and operational realities allow. So, it remains to be seen when H-4 spouses will be added. Even if implemented, it would leave H-4 spouses in the position of having to pay \$1,750 simply to avoid a gap in employment authorization under current lengthy processing times.**

- b. To address these gaps, USCIS could develop a regulation that implements an automatic EAD extension period for H-4 spouses such that filing the Form I-539 extension of status application, with a renewal EAD application, triggers the automatic EAD extension beyond the end date of Form I-94. It might be argued that, because the EAD is contingent upon being in valid status, allowing this type of automatic extension might risk allowing individuals to work while being ineligible for the underlying extension of status. However, the automatic extension would be limited to H-4 spouses who have already held such status, and a related EAD, and are simply seeking a renewal. If USCIS determines they are ineligible during the H-4 extension/EAD renewal process, the automatic extension period could simply terminate.**
- c. In addition, this proposal mirrors current regulatory allowances for certain employers who seek to extend the status of nonimmigrant employees on Form I-129, *Petition for a Nonimmigrant Worker*, under certain conditions. Under that provision, filing the Form I-129 extension triggers an automatic extension period of 240 days for employees who were previously eligible and approved. The automatic extension ceases once USCIS adjudicates Form I-129 or after 240 days, whichever is earlier. A similar provision could be implemented for eligible H-4 dependent spouses.**
- d. *E and L spouses*. While now recognized as employment authorized incident to status, left unaddressed is their employment authorization when they file an extension of their status on time, but USCIS does not adjudicate it before their status expires. To address this, USCIS might implement a regulatory provision, such as the one described above for H-4 spouses, triggering an automatic extension period while their extension of status application is pending. Again, this would only apply to those previously approved for such status and seeking an extension. Without such a provision, lapses in employment would undoubtedly occur.**

USCIS has not yet established a public timetable for expanding premium processing to H-4 dependents but will do so as soon as operationally feasible.

In the meantime, the agency notes backlogs and processing times are greatly reduced from pandemic-era highs. As of July 18, 2022, gross pending Form I-539s for H-4 nonimmigrants was approximately 36,000, down from a high in June 2021 of nearly 97,000. Likewise, for the same time periods, pending (c)(26) category Form I-765s for H-4 nonimmigrants totaled approximately 16,600, down from approximately 39,000. As of July 18, 2022, median processing times for Form I-539s for H-4 nonimmigrants were 3.7 months and (c)(26) Form I-765s were 4.4 months. While USCIS has not quite reached its backlog reduction goals, progress is significant and ongoing and we expect to meet our goals by the end of FY 2023.

Regarding E and L spouses, Forms I-94 containing new codes (E-1S, E-2S, E-3S, and L-2S) to distinguish these spouses from other dependents can currently be used as evidence

of employment authorization. In addition, certain dependent spouses qualify for the automatic extension of their existing Form I-766 EADs if they meet the following conditions: (1) they timely filed a renewal Form I-765, Application for Employment Authorization, based on the same E or L-2 nonimmigrant status; and (2) they have an unexpired Form I-94 showing their status as an E or L-2 nonimmigrant.

As part of its regulatory agenda-setting process, USCIS will explore additional permanent improvements for H-4 dependents that may be pursued through regulatory change, as suggested by the CIS Ombudsman.

- 3. Allow applicants to file for renewal EADs earlier and issue renewal EADs with validity periods that begin when the original EAD expires.**
  - a. USCIS should allow applicants to submit a renewal EAD application more than 180 days before the EAD expires. Allowing an earlier filing would appear to give USCIS more time to process the case, manage its workload, and prevent an unplanned delay in processing from causing a lapse in employment authorization. USCIS' stated goal is to be able to adjudicate EAD applications within 3 months by the end of FY 2023.**
  - b. In instances where the renewal EAD is adjudicated prior to expiration of the current EAD, USCIS should revise its policy and operational processes to allow for the renewal EAD to begin when the original EAD expires, as opposed to its current practice of beginning validity on the date of adjudication. This would help avoid overlapping EAD validity dates and prevent truncated validity of the renewal EAD.**

USCIS does not deny Form I-765 renewals for filing too early, and we adjudicate subsequent filings no matter when an applicant files a renewal application. As USCIS works toward its goal to reduce processing times to 3 months, we continue to encourage applicants not to submit a renewal EAD application more than 180 days before their EAD expires to reduce the extent of overlapping EAD validity dates.

USCIS is also exploring the second recommendation and acknowledges that better aligning EAD validity dates to avoid overlap could improve overall outcomes for applicants and the agency. USCIS will continue to discuss this recommendation internally and update its policy guidance, as needed.

- 4. Continue to expedite EAD renewals for workers in certain occupations in the national interest.**
  - a. With its current backlog, USCIS should continue to identify and prioritize occupations for expedited processing. For example, the United States is still suffering pandemic-induced delays in the supply chains of goods, yet noncitizen truck drivers often cannot maintain their commercial driver's licenses due to EAD processing delays. Expediting EADs for workers who directly contribute to rectifying supply chain issues may be an area to explore.**

- b. There may be other occupations and categories worthy of review, and USCIS is positioned to partner with DHS components, other governmental agencies, and the public to identify where help is needed.**

USCIS has made progress in reducing the EAD application backlog. From January 1 to August 31, 2022, the number of pending EAD applications went from 1.56 million to 1.42 million, which is approximately a 10 percent reduction. For the same time period, the median processing time for EAD renewal applications went from 6.2 months to 4.8 months, which is a 22 percent reduction. However, USCIS continues to expedite certain EAD initial and renewal applications for essential healthcare and childcare workers and is committed to reducing our EAD renewal backlog further to ensure all workers can renew their EADs with minimal disruptions. If additional industries are identified as requiring this specialized expedite process, USCIS will seek to coordinate and assess how to do so without compromising the overall EAD workload.

Additionally, the EAD TFR has increased the automatic extension for renewals of many EADs, which alleviates much of the need for these extraordinary accommodations.

- 5. Continue to explore and augment the use of technology, including online filing and machine learning, to further automate EAD processing.**
  - a. USCIS has committed to complete electronic processing capability by FY 2026. The CIS Ombudsman continues to support and recommend digitization efforts, as described elsewhere in this Report and in our 2021 Annual Report, including for EAD applications. This can include: the ability to file online, receive all correspondence and notices from USCIS electronically, and respond online to a request for evidence.**
  - b. The CIS Ombudsman recommends continuing to explore the use of Robotic Process Automation (RPA) to more efficiently process EAD applications. Presumably, USCIS could expand automated eligibility verification to additional EAD categories and use RPA to prioritize renewal cases where loss of employment authorization is imminent.**
  - c. The CIS Ombudsman also recommends that USCIS engage with external stakeholders to discuss advancements and concerns with respect to RPA, including how to maximize efficiency while ensuring security, protection of privacy, and benefit integrity.**

USCIS agrees with these recommendations and continues to explore and expend significant resources leveraging technology solutions to improve processing speed, efficiency, consistency, and integrity across all aspects of EAD filing and adjudications. We will also explore efforts to engage with stakeholders to share steps USCIS has taken to leverage technology and to gather feedback on related challenges or concerns.

- 6. Consider new regulations that provide more flexibility for USCIS and approved workers during periods of backlogs or long processing delays.**
  - a. USCIS should explore policy, operational, and regulatory changes that provide more flexibility for those with previously approved EADs while**

**backlogs are occurring or when new, unanticipated workloads create a need for USCIS to divert resources.**

USCIS will explore permanent improvements that may be pursued through regulatory change, as suggested, as well as areas where policy and/or operational changes might mitigate the consequences of backlogs or long processing delays.

- 7. Consider increasing flexibility in the Form I-9 process.**
  - a. USCIS could consider regulatory amendments that would allow employers to accept approval notices, where an EAD is now required, for Form I-9 purposes.**
  - b. If USCIS must issue an EAD-like document, USCIS should consider an electronic format. Efforts are underway to move other similar documents to an app-based platform. For example, with Transportation Security Administration approval, certain companies are piloting how to issue driver's licenses via smart phone apps in several states.**
  - c. USCIS should leverage these advancements by engaging with external stakeholders on ways to maximize efficiencies while mitigating risk.**

During the COVID-19 global pandemic, USCIS allowed Forms I-797 Approval Notices for EADs to be acceptable as a List C #7 document issued by the Department of Homeland Security (DHS) that establishes employment eligibility, even though the notice stated it is not evidence of employment authorization. This temporary policy was in place due to card production delays, was limited to notices with a date of December 1, 2019 to August 20, 2020, and was acceptable as documentation from August 19, 2020 to February 1, 2021, with a reverification requirement. This temporary policy was promoted through our communications outreach tools which provided the public program news through: USCIS.gov, GovDelivery messages, direct messaging tools such as Text-to-Subscribe, Twitter, LinkedIn, and posting on [I-9 Central](#) and [E-Verify](#) websites.

USCIS will explore permanent improvements as recommended by the CIS Ombudsman.

- 8. Consider eliminating the need for a separate EAD application when filing for certain benefits.**
  - a. USCIS can reconsider the need to separately apply for an EAD when based on a pending underlying request; for example, USCIS currently requires a separate EAD application for those with a pending application to adjust status. USCIS could explore possible changes to regulations that would allow these applicants to receive employment authorization—whether through issuing an EAD, a notice, or some other verification—once they file Form I-485 and security checks are completed and cleared. These requests comprise nearly 30 percent of the over two million EAD applications filed each year. Allowing for employment authorization shortly after filing would eliminate the long wait for an EAD adjudication based on not much more than whether the applicant has a pending adjustment of status application. If USCIS denies the adjustment of**

**status application, it can also revoke employment authorization, as it does today.**

USCIS continues to explore this recommendation, the costs and benefits, as well as timing and prioritization as we continue to pursue other EAD streamlining efforts described above.

## **V. Increasing Accessibility to Legitimate Travel: Advance Parole Document**

The CIS Ombudsman expressed concerns with USCIS' processing of, and overall need for, Form I-131, Application for Travel Document. In line with these concerns, the CIS Ombudsman made recommendations for regulatory and process changes.

USCIS understands the CIS Ombudsman's concerns and is working to meet the new cycle time goal referenced in the report and improve processing times for Form I-131. Service Center Operations (SCOPS) and Field Operations Directorate (FOD) are monitoring the Form I-131 workload to identify, pull, and adjudicate cases to ensure first-in, first-out processing of these applications. Additionally, the use of overtime funds was authorized to adjudicate this workload. USCIS continues to explore ways to balance our workloads, optimize our adjudication processes, and ensure that we meet our processing goals.

The CIS Ombudsman made the following recommendations (USCIS responses are located below each recommendation):

- 1. Regulatory Changes: The agency can take the following measures to implement an operationally workable advance parole process for AOS applicants in the United States.**
  - a. Amend 8 C.F.R. Part 223 to authorize advance parole as incident to filing Form I-485, so that applicants would not need to submit Form I-131, *Application for Travel Document*, if they have a receipt for a pending Form I-485 under section 245(a) of the INA and have submitted biometrics to USCIS.**
  - b. Amend 8 C.F.R. § 245.2(a)(4)(ii)(B) regarding abandonment of Form I-485 upon departing the United States so that it applies only to applicants who are not under exclusion, deportation, or removal proceedings and who leave without a receipt notice evidencing advance parole.**

As part of its regulatory agenda-setting process, USCIS will continue to explore which permanent improvements to the advance parole process may be pursued through regulatory change.

- 2. Procedural changes: The agency can take the following measures to streamline the current process.**

- a. **Move high-volume Forms I-131 into a digital environment, allowing USCIS to leverage its technological capabilities to electronically notify the applicant and CBP when it grants advance parole.**
- b. **Extend the validity of the advance parole to individuals with pending Forms I-485 until USCIS renders a decision on the Form I-485 or to coincide with current processing times.**
- c. **Stop considering a pending Form I-131 for advance parole to be abandoned by travel abroad when applicants have departed the United States on a valid nonimmigrant visa before receiving their initial Advance Parole Document.**
- d. **Improve the emergency advance parole process by creating a specific track at the Contact Center for obtaining needed in-person appointments; fostering well-trained points of contact at the field offices for processing requests; developing a unified system of accountability for tracking the number of requests and outcomes of decisions rendered; and ensuring consistent adjudications among field offices.**

USCIS agrees with most of the procedural recommendations. Many requests submitted on Form I-131 are currently ingested into the Electronic Immigration System (ELIS). Adding all Form I-131 requests into ELIS will allow USCIS to track the number of emergency advance parole (EAP) requests received and the decisions issued. In addition, FOD and the USCIS Contact Center are working closely together to enhance the process for responding to urgent requests for EAP that require an in-person appointment, including addressing backlogs in appointment availability and ensuring urgent requests are prioritized both by the Contact Center and by FOD. For example, FOD is piloting the use of an “urgent” queue to schedule EAP requests to ensure sufficient availability of appointments.

USCIS concurs with the need to ensure consistency in the process. To that end, FOD plans to host round tables during FY 2023 with the field offices to discuss EAP processing guidelines and the exercise of discretion, and to solicit feedback to enhance consistency.

Additionally, USCIS is conducting a review of policy guidance and related materials to determine any necessary clarifications to ensure consistent and clear adjudications.

Finally, USCIS will explore extending the validity period of the advance parole document for noncitizens, including those with pending adjustment of status applications.

## **VI. Improving Access to the Expedite Process**

The CIS Ombudsman explores the challenges and concerns customers experience when requesting expedited processing, including apparent variance in how different offices process expedite requests and apply the expedite guidance. The CIS Ombudsman believes the lack of a consistent and transparent process, coupled with incomplete data collection and no mechanism for tracking outcomes, undercuts USCIS’ ability to plan for this workload.

To alleviate these concerns, the CIS Ombudsman has made the following recommendations (USCIS responses are located below each recommendation):

- 1. Establish centralized technological infrastructure and specialized personnel to intake and process expedite requests. USCIS could centralize the expedite request process by:**
  - a. Developing a public-facing portal to receive expedite requests and supporting documentation. An example to follow would be the recently created portal for deported veterans seeking assistance returning home to the United States.**
  - b. Exploring whether it can use myUSCIS to receive expedite requests and to maintain direct communication with requestors during the process.**
  - c. Using a centralized email address where individuals can submit a request along with supporting documentation.**
  - d. Assigning specialized staff at each adjudicating directorate to triage expedite requests, serve as a liaison with the requestor, and provide data collection, training, and strategic support. This could be done on either a national, regional, or local basis.**

On June 9, 2021, and January 25, 2022, USCIS updated its policy guidance to further clarify the criteria and circumstances that may warrant expediting adjudication of a benefit request as well as explain how USCIS assesses expedite requests under certain scenarios. See USCIS Policy Alert, [USCIS Expedite Criteria and Circumstances](#), PA-2021-12 (June 9, 2021) and USCIS Policy Alert, [USCIS Expedite Criteria and Circumstances](#), PA-2022-04 (Jan. 25, 2022). USCIS continues to review the field's application of its expedite policy guidance to ensure alignment and consistency.

USCIS concurs with utilizing new technology solutions for submitting expedite requests. This would allow this process to be streamlined. It would also allow for tracking and could simplify communications between different USCIS offices (for example, Contact Center and field offices or service centers). The work to develop an online mechanism to submit expedite requests, including the ability to upload evidence, has been completed, but is pending Paperwork Reduction Act (PRA) review.

USCIS does not agree with creating a centralized email address where documents can be submitted. Information received by email is not readily transferable into USCIS case management systems and the request would still need to be routed to the office with jurisdiction over application or petition for review. Centralized email address correspondence would also not benefit from the service request system which allows for tracking and monitoring of these requests.

Due to heightened confidentiality considerations for VAWA self-petitioners, U visa petitioners, and T nonimmigrant visa applicants under 8 U.S.C 1367, some enterprise-wide solutions for expedite requests are not feasible as a method of communicating with applicants. Because of this, any expedite request solutions must factor in these heightened confidentiality requirements and which systems, components, and staff may have access to 8 U.S.C. 1367 protected cases. For represented individuals, USCIS has dedicated email hotlines that attorneys and accredited representatives may use to submit an expedite request



for those applying for VAWA/T/U benefits. USCIS is actively exploring options to increase access to customer service channels for individuals covered by 8 U.S.C. 1367 confidentiality protections while adhering to our statutory obligations to protect their information.

Further, with respect to refugee cases, expedite requests are routed through overseas Resettlement Support Centers that are managed by the U.S. Department of State's Bureau of Population, Refugees, and Migration. This is an efficient way for refugee applicants to submit these requests.

Despite these challenges, we continue to look for efficiencies in the expedite process and we are exploring processes to improve the expedite process for certain populations when resources permit. For example, we are prioritizing Form I-765 expedite requests from healthcare and childcare providers to support efforts to minimize negative impacts from these two sectors as a result of the COVID-19 pandemic.

- 2. Create a new form for submitting expedite requests that is similar to Form I-912, Request for Fee Waiver.**
  - a. The form would help USCIS receive consistent information. It would also enable the agency to track information such as the reasons for the request, the types of forms for which expedites are requested, and the disposition of the request.**
  - b. Creating a new expedite request form could also help the agency to consider collecting a small fee.**
  - c. A service fee reflecting the cost of considering the expedite request would narrow the number of requests and align the process with the agency's operational realities while not necessarily being overly burdensome for the expedited processing requestors.**

While USCIS agrees with the overall goal of efficiency in processing expedite requests, USCIS does not concur with these recommendations. Given [processing time goals](#) set forth by the Director, this recommendation could have the unintended consequence of exacerbating backlogs as a new form would create another workload, requiring resources and additional staff to process. A fee could also be inconsistent with the need for an expedite, as severe financial loss to a company or a person is one reason for requesting an expedite.

- 3. Develop standardized guidance to the field and to customers about the requirements and process that USCIS uses to consider and assess requests, including how it acknowledges it has received a request, timelines for action, and how it communicates outcomes.**
  - a. Regardless of whether USCIS develops a new form and fee, it should create a national SOP to establish the methodology for triaging and evaluating expedite requests.**
  - b. USCIS should develop a specific training program to implement the SOP and provide more specific examples and guidance for interpreting the expedite criteria.**

- c. USCIS should create an expedite request assessment worksheet that would guide reviewing officers in a standardized way on how to evaluate each request consistently and fairly.**

USCIS agrees with further standardizing determinations for expedite requests and will evaluate the value of adding a worksheet.

The USCIS Policy Manual provides standardized guidance for the field and is a benefit for requestors and other stakeholders. As stated in the USCIS Policy Manual, USCIS considers all expedite requests on a case-by-case basis and may require additional documentation to support such requests. See USCIS Policy Manual, Volume 1, General Policies and Procedures, Part A, Public Services, Chapter 5, Requests to Expedite Applications or Petitions [[1 USCIS-PM A.5](#)]. USCIS further provides detailed information for the public on expedite requests on its [How to Make an Expedite Request](#) webpage.

USCIS has updated the policy twice to incorporate important changes and clarifications. On June 9, 2021, USCIS updated its expedite policy guidance to clarify criteria or circumstances that may warrant granting an expedite request. See Policy Alert, [USCIS Expedite Criteria and Circumstances](#), PA-2021-12 (June 9, 2021). On January 25, 2022, USCIS also updated its expedite policy to make further clarifications and explain how USCIS assesses expedite requests under certain scenarios. See Policy Alert, [USCIS Expedite Criteria and Circumstances](#), PA-2022-04 (January 25, 2022).

USCIS updates its policy guidance as needed and provides ongoing training for the field to assist in the review of expedite requests, and will continue to explore opportunities to improve collaboration with internal and external stakeholders.

- 4. Engage in robust data collection to help project workloads and maintain accountability with how offices are interpreting and applying the guidance.**
  - a. USCIS would benefit from full data on expedite requests to better analyze both the full impact expedites have on regular workloads and ensure offices apply the criteria consistently across similar situations and applications. A complete dataset would enable the agency to confirm where the needs for expedites are greatest, both by form type and location, and even better manage the actual adjudications of those applications where expedites are most requested, leading to reducing the need for expedites altogether.**

USCIS agrees on the importance of data collection in workload oversight and consistency in interpreting eligibility criteria. We are open to exploring ways in which we can accomplish a full data capture to fine-tune our services and make the best use of our resources.

## **VII. Initiating a Discussion on Ways to Address the Affirmative Asylum Backlog**

In this section, the CIS Ombudsman details how the affirmative asylum backlog came to be and shared their lingering concerns. The CIS Ombudsman also made seven recommendations that USCIS addressed below.

USCIS made significant progress in addressing resource requirements necessary to reduce the affirmative asylum backlog while increasing operational capacity to address the rising workload at the Southwest Border. USCIS increased the number of asylum officer positions from 273 positions in 2013 to 1,024 positions in 2022. During this same time period, USCIS opened three new permanent asylum offices (Tampa, Boston, and New Orleans) and has approved additional facility projects to open other offices in several underserved areas in the near future.

USCIS received funding in the 2022 Consolidated Appropriations Act for USCIS Operations and Support specifically for processing asylum applications in the backlog. The USCIS Asylum Division used its portion of the \$275 million in discretionary funding to hire nearly 150 staff to work exclusively on affirmative asylum backlog reduction, overtime funding, circuit ride travel, file storage contract costs, and interpreter funding. However, we note that USCIS did not receive renewed funding in FY2023 Appropriations for asylum backlog reduction. USCIS is requesting 996 positions and \$264 million in the FY 2024 President's Budget Request to continue efforts to reduce case backlogs, including asylum backlogs.

As of December 16, 2022, there were 834 asylum officers onboard (81 percent of funded staffing, leaving approximately 190 vacancies).

In March 2022, asylum offices generally returned to full office utilization when operating under low or medium CDC community levels following modifications to health and safety protocols established in response to the COVID-19 pandemic. Until those modifications were implemented, the COVID-19 pandemic made it necessary to reduce the number of in-person interviews that could be safely conducted, thus slowing the rate at which USCIS could adjudicate affirmative asylum applications. Asylum offices retained program efficiencies developed and adopted as part of pandemic response and continue to benefit from them. Among these practices is the optional use of video technology to conduct affirmative asylum interviews in a hybrid work setting. In addition, USCIS extended the expiration date to September 12, 2023, of a temporary final rule whereby applicants who speak one of 47 languages do not need to bring an interpreter to their affirmative asylum interviews, which, when COVID-19 community levels require social distancing, frees up office space for additional affirmative asylum interviews previously occupied by the applicant's interpreter.

In November 2022, USCIS launched the online filing process for Form I-589, Application for Asylum and for Withholding of Removal. Filing online allows for faster receipting and biometrics scheduling than filing a paper application by mail. It also offers the ability to supplement the online application with additional evidence and receive correspondence through an individual's online account. During the first month after the public launch, more than 19,000 individuals filed their asylum applications online.

USCIS has explored an alternative to our paper-based manual case intake system at the USCIS Service Centers, which will involve moving Form I-589 intake to the Lockbox facilities to allow

for the complete front-end digitization of asylum applications. This will allow adjudicators to leverage case management and adjudication tools built for online filings and remote interviewing for all newly-ingested cases. USCIS welcomes recommendations for new efficiencies and process improvements made by the CIS Ombudsman and by all our stakeholders. The Asylum Division continually evaluates and institutes new initiatives and efficiency measures to increase case processing and to mitigate the negative impacts that processing delays have on asylum seekers and the integrity of the asylum system. At the same time, all potential efficiency measures and process changes are evaluated for impacts on backlog, cost and practicality of the measure, and whether the measure is permissible under current laws and regulations. For the recommendations made in the CIS Ombudsman's 2022 Annual Report, where possible, such analysis has been provided as part of this response. Where appropriate, potential changes have been suggested in the USCIS response that may allow for implementation of the recommendations in ways that successfully contribute to affirmative asylum backlog reduction.

The CIS Ombudsman provided the following recommendations (USCIS responses are located below each recommendation):

**1. Apply best practices from refugee processing to asylum backlog reduction efforts.**

Overseas refugee processing is supported by federally funded entities that assist in referring applicants to USCIS for interview and in preparing necessary casework prior to an interview. USCIS will consider and explore the CIS Ombudsman's recommendation for an affirmative asylum processing model similar to existing administrative and processing functions that support the U.S. Refugee and Admissions Program (USRAP). USCIS will examine whether the measure is permissible under current law and regulations governing affirmative asylum adjudications, which differ from those governing refugee processing, and whether the measure would contribute to affirmative asylum backlog reduction without creating excessive financial costs.

**2. Identify and group cases to increase efficiencies in interviews and adjudications, to prioritize asylum applicants in need of immediate protection, and to deprioritize non-priority applicants, such as those that have other forms of relief available.**

Prioritizing caseloads to maximize program efficiencies and customer service is critical to affirmative asylum processing. In general, most affirmative asylum cases currently are prioritized as follows:

- The first priority is to schedule for interview and complete cases that were rescheduled at the applicant's request or the needs of USCIS. The primary goal of this priority is to meet processing timeframes established in the Immigration and Nationality Act (INA).
- The second priority is to schedule for interview and complete the most recently filed applications pending 21 days or fewer. The primary goal of this priority is to process cases within timeframes established in the INA as well as complete new

applications prior to the expiration of the waiting period required before an individual may apply for, and be granted, an EAD based on a pending asylum application, so that applicants are not incentivized to apply for asylum simply to obtain employment authorization. Prioritizing newer filings disincentivizes individuals from filing asylum applications where their primary motivation is employment authorization regardless of their protection needs.

- The third priority is to schedule for interview and complete all other pending cases, starting with newer filings and working backward toward older filings.

In addition to these priorities, asylum office directors may still exercise discretion, on a case-by-case basis, to consider urgent requests for an interview outside of the priority order listed above. Throughout most of FY 2022, the Asylum Division worked to complete at least 1,000 of the longest pending cases per month.

These scheduling priorities were considered the best method for balancing program efficiencies with customer service. In 2018, after USCIS switched back to a scheduling policy that prioritizes newer filings, the backlog of affirmative asylum applications generally increased at a much slower rate than it did when USCIS scheduled cases in simple order of receipt. Specifically, the backlog increased by 10 percent in FY 2018, 7 percent in FY 2019, 13 percent in FY 2020, and 7 percent in FY 2021. By contrast, the backlog increased by 49 percent-89 percent each year from 2014 to 2017 while USCIS utilized a scheduling policy that prioritized older filings.

Although USCIS observed an uptick in total receipts as of January 2022, data indicates the current scheduling policy successfully performs its primary function of disincentivizing filings made primarily to receive employment authorization while the asylum application is pending. The FY 2022 uptick in receipts compared to prior years when USCIS prioritized new filings over older ones is the result of new developments during FY 2022. USCIS is now experiencing a significant increase in applications filed by nationals of Cuba and Venezuela. Between FY 2021 and FY 2022, annual affirmative asylum application receipts from Cuban nationals increased from 2,800 to 59,200, an increase of 2,014 percent. Receipts from Venezuelan nationals increased from 9,200 to 42,500, an increase of 362 percent, for the same period. Applications filed solely by Venezuelan and Cuban nationals comprised more than 46 percent of all receipts in FY 2022. USCIS also has seen an increase in new applications filed electronically, particularly by Cuban and Venezuelan nationals. I-589 filing statistics are [available online](#).

USCIS will evaluate whether there are other categories of cases that could be identified for more efficient processing. For instance, USCIS created reporting tools for asylum offices to easily identify pending applications that can be dismissed because the applicant obtained lawful permanent residence, unless the applicant chooses to continue to pursue asylum.

Notably, Congress prioritized asylum processing of parolees evacuated to the United States through Operation Allies Welcome by requiring USCIS to interview applicants within 45

days and complete their cases within 150 days, barring exceptional circumstances. USCIS is committed to adhering to these timelines in addition to priorities above.

**3. Expand the role of the Asylum Vetting Center (ZGA) to triage cases into different case processing tracks that allow USCIS to use truncated or accelerated processing for certain groups of cases.**

The Asylum Vetting Center (ZGA) is designed as a centralized pre-interview case preparation and triage model similar to the USCIS National Benefits Center (NBC). ZGA will assist asylum offices in completing many pre-interview administrative processes and security vetting functions and enable asylum offices to focus on tasks and duties associated with providing in-person services. Full establishment of ZGA also ensures asylum applications and corresponding case files receive consistent and thorough review and are fully prepared prior to interview.

These processes cannot be fully instituted at ZGA until construction of its physical space is completed and staffing is sufficient. As of February 2023, USCIS estimates that construction will be largely complete and employees will occupy 80% of ZGA by the end of May 2023 and the remaining 20% of the facility will be occupied in October 2023. Until construction is complete and staffing is sufficient, ZGA will continue to provide certain services with existing staff, such as completing security checks for asylum cases pending at certain asylum offices; providing supplemental antifraud investigative resources to the Fraud Detection and National Security Directorate (FDNS) immigration officers embedded in asylum offices; intaking direct asylum filings (for example, nunc pro tunc filings); and completing other low volume, non-interview workloads. The ZGA staffing is being funded using IEFA for FY2023. USCIS has requested appropriations to support these positions in the FY2024 Budget. The humanitarian workload that USCIS does without fee adds significant costs to other fee-paying applicants and petitioners. As the humanitarian mission has grown, costs also continue to increase; those costs are placed entirely on the backs of applicants and petitioners that pay fees for immigration benefits. Appropriations for these important programs allows USCIS to remove these costs from future fee rules. Should appropriations not be provided in FY2024, USCIS will continue to fund these positions by charging fee-paying applicants and petitioners higher fees to cover the cost of this work.

**4. Rethink case preparation processes to include case complexity analysis, focused interview guidance for specific caseloads, and interview orientation for applicants.**

RAIO is developing a case complexity model and is conducting analysis. The initial goal of the model is to analyze data from past cases and interviews to predict possible interview duration and complexities for similar cases, which will assist in more efficient scheduling practices. Additionally, USCIS and interagency partners established a working group with the goal of examining ways to make it easier for officers to conduct focused interviews that are narrowly targeted to clarifying specific issues regarding eligibility determinations. The working group is examining all aspects of the goal, from legal and regulatory requirements to operational and technical constraints. In order to reduce applicant no-show rates and reschedule requests, the Asylum Division is considering implementing various options,

including providing more information to assist applicants with asylum interview preparation in the form of updated USCIS website content or orientations.

**5. Consider specialization, interview waivers, and simplifying final decisions as a way to increase case completions while supporting the welfare of officers and applicants.**

USCIS asylum offices leveraged specialization successfully:

- First, in FY 2022, asylum offices assigned congressionally funded backlog reduction staff solely to the adjudication and processing of the longest pending affirmative asylum applications, rather than also focusing on credible fear, reasonable fear, and other screenings. As a result of this funding in FY 2022, a dedicated staff was consistently assigned to the processing of the oldest cases, which allowed the processing of more than 14,000 cases filed in FY 2018 or earlier.
- Second, the creation of the Asylum Officer-3 (AO-3) and corresponding GS-14 Supervisory Asylum Officer positions established to conduct and process Asylum Merits Interview (AMI) cases pursuant to the Asylum Processing Interim Final Rule (IFR) involves specialization to adjudicate AMI cases, which involve determinations on eligibility for statutory withholding of removal and withholding or deferral of removal under the Convention Against Torture, in addition to the asylum adjudication.

Although additional specialization initiatives were tried in the past with mixed results, there are no other specialization categories currently in use. Instead, in order to ensure the most efficient and flexible operations, asylum offices cross train all asylum officers in the Asylum Division's major workloads to allow for maximum asylum officer availability.

**6. Implement a feedback loop between USCIS and the immigration courts, and target protection screening efforts to improve the accuracy of decisions and ensure the effective use of government resources.**

There is a longstanding relationship at both the local and national level between USCIS and the Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR) immigration courts. Since the formation of the asylum program, both the former Immigration and Naturalization Service (INS) and USCIS have closely followed EOIR precedent decisions and implemented procedural changes and new training materials based on these decisions.

At the local level, asylum offices maintain ongoing contact directly with local immigration courts as well as the local offices of the U.S. Immigration and Customs Enforcement's (ICE) Office of the Principal Legal Advisor, which represent DHS before EOIR in immigration court proceedings, both with respect to a single case or a series of cases or fact patterns. This

longstanding collaboration has expanded with the implementation of the Asylum Processing Interim Final Rule (IFR), which provides for the adjudication of asylum applications not granted by USCIS during the Asylum Merits Interview (AMI) process in streamlined removal proceedings before EOIR. Based on the CIS Ombudsman recommendation, USCIS will further engage EOIR to identify opportunities for increased collaboration.

#### **7. Engage with stakeholders on any new proposals to ensure meaningful backlog reduction.**

In FY 2022, USCIS restarted its quarterly national asylum stakeholder engagements and publication of asylum adjudications statistics on the USCIS website and will continue to engage stakeholders in FY 2023, with a focus on the affirmative asylum backlog. USCIS also plans to hold listening sessions to hear comments and feedback from stakeholders. USCIS endeavors to provide additional backlog-related statistics and information for applicants and stakeholders on the public website and through future engagements. In addition, as part of our expanded engagement strategy, USCIS will explore ways to provide applicants whose cases are in the asylum backlog with more information in anticipation of their scheduled interview.

In FY 2022, USCIS and external partners established a working group with the goal of examining ways to streamline pre-interview processes and post-interview decision-making and documentation. The group examined all aspects of the affirmative asylum process to gain additional efficiencies and resulted in a set of recommendations currently in the process of implementation or being considered for implementation.

Finally, RAIO hosted a two-day summit in January to generate creative and innovative short, medium and long-term solutions to further address the affirmative asylum backlog and credible fear caseload. The summit included numerous DHS stakeholders, including CISOMB.

## **VIII. Eliminating Barriers to Obtaining Proof of Employment Authorization for Asylum Applicants in Removal Proceedings**

The CIS Ombudsman discusses the barriers that exist for asylum applicants obtaining an EAD under the (c)(8) category for pending asylum applications. The Annual Report suggests these barriers are the result of split processing between USCIS and DOJ. In addition, the CIS Ombudsman suggests poor information sharing between the agencies and the challenges of applicants verifying and correcting asylum EAD clock information have led to such barriers. In support of the CIS Ombudsman's conclusions, the report provides examples of applicants that provided evidence that, though an asylum application was accepted by EOIR, USCIS denied their (c)(8) EAD application because the electronic system USCIS relies on did not reflect receipt/acceptance of the asylum application.



The CIS Ombudsman details how the two-agency process delays the issuance of EADs and Forms I-94. In addition, the report states continued barriers impede access to immigration and other benefits for individuals seeking asylum in removal proceedings.

The following are the recommendations provided by the CIS Ombudsman and the USCIS responses.

- 1. Provide guidance to officers on how to contact EOIR to resolve discrepancies between documents submitted with a Form I-765, Application for Employment Authorization, and data pulled from EOIR systems related to asylum applicants in removal proceedings.**
  - a. The absence of an electronic record of the filing of an asylum application with EOIR should not be dispositive and result in a denial of a Form I-765 without considering the documentary evidence submitted. An applicant for employment authorization must submit evidence that the Form I-589 has been filed in accordance with the asylum regulations, but electronic evidence is not required. If a USCIS officer determines the documentary evidence is not credible, then the decision should give the specific reason(s) why and refer to evidence in the record that supports the conclusion. Moreover, to minimize further delays, the officer should consider either inquiring with EOIR or issuing a request for evidence or notice of intent to deny before issuing a denial notice because missing data could be an administrative error not caused by the applicant. By providing guidance to officers on how to contact EOIR to resolve discrepancies between documents submitted with a Form I-765 and relevant data pulled from EOIR systems, USCIS will not deny employment authorization to eligible applicants.**

For the purposes of qualifying for a (c)(8) EAD based on a defensive asylum application pending with EOIR, the Form I-589 is not considered properly lodged or filed unless it was accepted by EOIR. For example, if an applicant submits evidence to USCIS showing the Form I-589 is being processed for biometrics, which requires a copy of the first three pages of the Form I-589, this is not evidence that the Form I-589 was filed or lodged with and accepted by the court.

While USCIS and EOIR share some data elements, the EOIR immigration court process is independent of USCIS. EOIR records are entered or changed by the immigration courts only and it is outside of USCIS's purview to intervene in a pending asylum applicant's proceedings before DOJ. Depending on the facts of a given case, USCIS does issue RFE and NOIDs requesting evidence when it is unclear if an applicant lodged/filed their I-589 with the court or evidence the applicant is pursuing an asylum claim before a USCIS asylum office, an immigration judge, or the Board of Immigration Appeals. USCIS will explore options to provide clearer guidance to applicants on the appropriate evidence to submit to demonstrate they have lodged or filed their I-589 with EOIR.

While USCIS and EOIR share some data elements, the EOIR immigration court process is independent of USCIS.

- 2. Leverage information sharing and IT systems to simplify the process of creating EADs and Forms I-94.**
  - a. Under the MOA with EOIR, USCIS officers have access to EOIR asylum information for immigration status verification purposes, including whether an IJ has granted or denied asylum. USCIS can abide by 8 U.S.C. § 1738 by using EOIR systems to determine that an IJ has granted asylum without requiring the individual to present the paper IJ order in person. Absent other available information, confirmation via EOIR's secure electronic systems should be sufficient to verify status.**
  - b. USCIS could leverage ELIS to make asylum EAD Clock information easily available to applicants and their legal representatives and extend online filing for Form I-765 to the (c)(8) category. If steps necessary to create a Form I-94 cannot be performed without the applicant being present, then USCIS and EOIR could combine full data sharing with enhanced IT capabilities to build a process where an IJ grant entered into the EOIR system would automatically trigger the scheduling of an in-person appointment at a USCIS field office. USCIS could also augment its online self-service tools to allow asylum applicants to request an appointment at a field office to obtain proof of asylee status. This would improve individuals' ability to request customer service and relieve pressure on Contact Center access for all callers, not just asylees.**

On January 23, 2023, USCIS announced applicants applying for a (c)(8) EAD can file the Form I-765 online through myUSCIS. This enhancement follows USCIS moving the case management of the (c)(8) Form I-765 into ELIS, where applications may be processed more quickly. Currently, USCIS does not calculate the asylum EAD clock for applicants based solely on case information ELIS, and instead reviews multiple systems to verify accurate clock information. Any potential efforts to share a public-facing asylum EAD clock would require extensive coordination with EOIR and significant new development across USCIS and DOJ systems.

USCIS addressed our Form I-94 response below, under recommendation number four.

- 3. Designate the Immigration Judge's (IJ) order granting asylum as acceptable evidence for Form I-9 employment verification purposes.**
  - a. DHS could also consider updating the M-274 Handbook to include the IJ order as a List C document, at least for a minimum period of time, to alleviate applicants' pain points resulting from USCIS delays. The IJ order would only serve as proof of status and not be a grant of employment authorization.**
  - b. The CIS Ombudsman believes the recommendation is consistent with sections 274A(b)(1)(C) and (E) of the INA that gives the DHS Secretary authority to identify what documentation is acceptable for I-9**

**employment verification purposes. There is no express statutory language limiting a document evidencing employment authorization to a DHS-issued document. Under 8 U.S.C. § 1324a, List C documents can be a Social Security card that does not prohibit employment or “other documentation evidencing authorization of employment in the United States which the Attorney General finds, by regulation, to be acceptable for purposes of this section.” The CIS Ombudsman acknowledges providing an IJ order still requires the asylee to present a List B (identity) document, which may be difficult for many, and some asylees may not want their employers to know that they have been in removal proceedings.**

List C, #7 requires that documentation is issued by DHS. An IJ order is not a DHS-issued document. Recognizing the IJ order as a List C document would require regulatory action. Currently, USCIS is looking at other ways to make this process easier for employers and employees.

- 4. Consider a pilot program which places USCIS immigration services officers who have the authority to provide USCIS documents in certain immigration courts to new asylees.**
  - a. Immediately after an IJ grants asylum and concludes removal proceedings, a USCIS officer would be available to provide Form I-94 or at least start the process for producing a Form I-94 that can be mailed directly to the applicant, thus bypassing the Contact Center.**

USCIS concurs in part. FOD implemented utilizing EOIR systems to proactively provide Form I-94 to applicants via mail, thus removing in-person requirements. USCIS does not concur with stationing a USCIS officer at immigration courts as the volume of IJ grants does not justify a full-time presence. There are over 60 immigration courts nationwide that hear cases in several locations as well as virtually. Without direct, general access to the EOIR scheduling and decisional databases, USCIS is unable to track when asylum cases are heard and/or decided by the court. To station USCIS personnel at each of these locations is not an efficient use of resources.

## **IX. USCIS’ Digital Strategy: Nearing an Inflection Point**

In this article, the CIS Ombudsman shares their optimism regarding efforts USCIS has made as we continue to modernize our processes and technology solutions. The article highlights how COVID-19 played a role in slowing the progress in FY 2020 and FY 2021, but also how USCIS increased efforts with new forms made available for electronic filing and processing in FY 2022, with more scheduled introduction in FY 2023.

In addition to promising to continue to monitor the progress and results of USCIS' digitizing efforts, the CIS Ombudsman made three new recommendations and reemphasized a 2021 recommendation (USCIS responses are located below each recommendation):

- 1. Set Application Programming Interface (API) integration and online filing for Form I-912, Request for Fee Waiver, as immediate priorities.**
  - a. These two action items would undoubtedly lead to an increase in online filings. As discussed earlier, USCIS intends to release Form I-912 for online filing in the next fiscal year, but the agency's reluctance to do so until now has discouraged otherwise qualified individuals from filing for certain benefits online. For example, some people cannot file Form N-400 or I-90 online because they also need to file a Form I-912. Accordingly, the CIS Ombudsman supports calls by stakeholders for USCIS to digitize Form I-912.**

The Office of Information Technology (OIT) recognizes the benefits of making select USCIS forms and information publicly available through secure APIs, which provides efficiencies by allowing private industry to securely develop their own software that can interface with USCIS systems. OIT is specifically working with USCIS stakeholders to develop an API which would allow external software development teams to submit FOIA requests as an initial use-case as part of this approach. In addition, OIT launched a publicly available developer portal ([developer.uscis.gov](https://developer.uscis.gov)) with a pair of sample APIs to encourage industry developer teams to participate. OIT will continue to investigate the creation of additional APIs to support signature and evidence submission, including the digitization of forms like the Form I-912.

- 2. Create and initiate a targeted, nationwide myUSCIS promotion campaign to encourage individual and employers to submit forms online.**
  - a. The money the agency spends to educate and promote online filing would be recaptured through savings for the agency through the reduced handling and storage of paper.**

USCIS is developing a targeted, nationwide promotion campaign to encourage customers to submit forms online. Pieces of the campaign are in use such as the "How to File Your Application for Naturalization Online" video. USCIS is incorporating online filing demonstrations as part of public engagements and is adding easy access to online filing at points where stakeholders seek information on [uscis.gov](https://uscis.gov). Additional videos are also in development such as "Uniting for Ukraine and Online Filing of Form I-134."

- 3. Develop more meaningful incentives for filing online.**
  - a. The CIS Ombudsman is confident that stakeholders will come to fully embrace online filing/processing in the coming years, yet the agency also acknowledges that there will likely be a portion of the public who will need to continue submitting forms by mail for a variety of reasons. At present, there is no direct monetary incentive for submitting a form online instead by mail.**

**In its now-enjoined 2020 Fee Rule, USCIS had planned a \$10 discount for those who file online. This amount is unlikely to accurately reflect the savings incurred. The CIS Ombudsman encourages USCIS to increase this amount but has insufficient information to recommend a specific sum.**

USCIS recognizes the potential for online filing of various forms to allow the organization to provide better service to applicants, and more streamlined adjudication. In the FY 2019/2020 Immigration Examinations Fee Account (IEFA) Fee Rule, USCIS proposed a flat \$10 fee reduction for 10 immigration benefit forms. This rule was enjoined by two federal courts and the online filing fee reductions have not gone into effect. In developing the proposed FY 2022/2023 IEFA Fee Rule, USCIS revisited the approach of online filing fee reductions. USCIS commissioned a Federally Funded Research and Development Center study to analyze the setting of online discounts in the fee rule to better encourage online filing. USCIS is leveraging this study and internal research to hone online filing fee discounts in the proposed fee rule.

- 4. Create a central portal and system to receive and forward Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, to the USCIS office that has the relevant benefit file.**
  - a. The CIS Ombudsman made this recommendation to USCIS in 2021 and presents it again here because it is critical. For the foreseeable future, attorneys and accredited representatives continue to have to submit interfiled paper Forms G-28 in connection with pending paper-based filings (that are on an adjudicator's desk or otherwise sitting in one of USCIS' file rooms) to ensure their receipt. Streamlining this process should be a priority.**

USCIS is committed to improving the customer experience by redesigning attorney and accredited representative online accounts to streamline submission of the Form G-28 and other enhanced online filing capabilities. This will modernize the attorney and accredited representative online experience, enabling two-way communication and enhanced services and interaction through the online account, to include access to filings and information for all associated cases.

## **X. U Nonimmigrant Status Bona Fide Determination Process: Successes and Challenges in Taking on a Backlog**

The CIS Ombudsman acknowledged that USCIS took a step in the right direction with the creation of the U Nonimmigrant Status Bona Fide Determination (BFD) process. The Annual Report provided readers an in depth look at the BFD process which includes mistakes that occurred during its initial rollout.

The report highlights statistics on processing times for Form I-918, Petition for U Nonimmigrant Status, and data on BFD completions and pending cases. The report also notes USCIS

responded to recommendations and is working to resolve issues identified by the January 2022, Office of Inspector General’s report on the U visa program.

Although no formal recommendations were provided, the report states USCIS should work to reduce lengthy delays that impact this process and the relief it was created to provide.

When the BFD was introduced in June 2021, USCIS temporarily halted posting processing times on its website to assess the impact. Initial estimates suggest USCIS would have this data available in January 2022; however, USCIS was not able to publish processing times until March 29, 2022. USCIS conducted the first BFD reviews in mid-July 2021, and determined at least six months of data are required to accurately calculate processing times. In addition, USCIS needed time to accurately gather and analyze data and consider options to present and update BFD processing time information on the USCIS website. Posted processing times now reflect the time from receipt to issuance of either a BFD notice or a notice that the petition is considered for waiting list placement. USCIS publishes this processing time range because it informs petitioners of the processing times for the first action on their petitions may result in a grant of deferred action and issuance of an EAD. Currently 80 percent of cases are completed within 61.5 months.

USCIS also published data on BFD on the [USCIS website](#). This data shows that in FY 2021 and FY 2022, USCIS conducted almost 79,900 BFD reviews. We have issued BFD grants to nearly 42,000 principal petitioners and 17,900 derivatives, for a total of 59,900. More than 10,000 full benefit adjudications are completed in order to meet the 10,000 cap (denials, prolonged RFEs, etc.).

In addition, the Form I-918 was identified as one of the priority forms that will be addressed in USCIS’ backlog reduction efforts and supported by the appropriations received in FY 2022 through overtime usage and hiring additional staff. Among all major forms that USCIS will be prioritizing with the help of the appropriated funds, Form I-918 has a net backlog of 218,000 cases, which is approximately 4 percent of the overall USCIS net backlog of roughly 5 million (see [Form I-918](#) statistics).

USCIS notes that some delays are due to other agencies. For instance, when necessary, USCIS issues requests for evidence for fingerprints for U visa petitioners and derivatives abroad; however, stakeholders report that some consulates are not able to schedule and process fingerprints for these matters. USCIS is aware of the challenges applicants are facing in scheduling the submission of biometrics in light of the COVID-19 pandemic and have discussed the issue with Department of State. We are evaluating options to address these issues.

USCIS continues to look for ways to alleviate the backlog. We recognize that this program provides critical benefits for crime survivors. We continue to explore ways to reduce processing times for the U BFD program and are making efforts to streamline processing.

## **XI. CIS Ombudsman’s Previously Released Recommendations**

On March 31, 2022, the CIS Ombudsman issued USCIS a recommendation on improving USCIS’ Form I-129 notification procedures. The recommendation was issued because current USCIS policies do not provide beneficiaries of Form I-129 petitions with notice of actions taken.

USCIS responded to the CIS Ombudsman’s recommendations on August 16, 2022.

On June 15, 2022, the CIS Ombudsman issued USCIS recommendations to address challenges of the current USCIS fee-setting structure. Recommendations were issued in part because the CIS Ombudsman believes the current fee-for-service funding model does not fully allow USCIS to meet its mission and goals.

USCIS responded to the CIS Ombudsman’s recommendations on September 14, 2022.

## **XII. Conclusion**

USCIS appreciates the work and dedication that the CIS Ombudsman and staff have put into their 2022 Annual Report. Backlog reduction is one of USCIS’ top priorities, and we are grateful that this report both highlights the areas where USCIS has made strides and focuses on areas where more attention is needed. USCIS will continue to reduce the backlog through efficient adjudications and by implementing recommendations and innovative processes.

USCIS looks forward to continuing to collaborate with the CIS Ombudsman in an effort to reach our goals while providing excellent service to our applicants and petitioners, their representatives, and our stakeholders.

## **Appendix A: Acronyms and Abbreviations**

API	Application Programming Interface
BFD	Bona Fide Determination
CIS Ombudsman	Office of the Citizenship and Immigration Services Ombudsman
CBP	U.S. Customs and Border Protection
CFO	Chief Financial Officers
CHAP	Consolidated Handbook of Adjudication Process
CMS	Content Management Service
CR	Continuing Resolution
DHS	Department of Homeland Security
DOJ	Department of Justice

EAD	Employment Authorization Document
EAP	Emergency Advance Parole
ELIS	Electronic Immigration System
EOIR	Executive Office for Immigration Review
FOD	Field Operations Directorate
FOIA	Freedom of Information Act
FY	Fiscal Year
ICE	U.S. Immigration and Customs Enforcement
IEFA	Immigration Examination Fee Account
IFR	Interim Final Rule
IJ	Immigration Judge
INA	Immigration and Nationality Act
IRAD	International and Refugee Affairs Division
NBC	National Benefits Center
NTA	Notice to Appear
OIRA	Office of Information and Regulatory Affairs
OIT	Office of Information Technology
OMB	Office of Management and Budget
RAIO	Refugee, Asylum and International Operations Directorate
TFR	Temporary Final Rule
UNHCR	United Nations High Commissioner for Refugees
USCIS	U.S. Citizenship and Immigration Services
USRAP	U.S. Refugee Admissions Program