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**USCIS Response to the  
Citizenship and Immigration Services  
Ombudsman's (CISOMB)  
2015 Annual Report to Congress**

*June, 30, 2016*



**Homeland  
Security**

*U.S. Citizenship and  
Immigration Services*



U.S. Citizenship  
and Immigration  
Services

June 30, 2016

Maria M. Odom  
Citizenship and Immigration Services Ombudsman  
U.S. Department of Homeland Security  
Mail Stop 0180  
Washington, DC 20528

Dear Ms. Odom:

Thank you for the publication of your 2015 Citizenship and Immigration Services Ombudsman's (CISOMB) Annual Report to Congress (2015 Annual Report). The report provided an opportunity for a comprehensive review of current U.S. Citizenship and Immigration Services (USCIS) processes, policies, and operations.

I have reviewed the report and discussed your findings with my senior leadership team. We all appreciate your insight on this wide variety of immigration issues and I concur with many of the findings.

The report documents our ongoing communication and collaboration with the CISOMB throughout this past year. We share your objective to improve the quality of adjudications and service delivery across all immigration form types. Thank you for recognizing USCIS' many accomplishments last year as we began administering the Executive Immigration Reforms. We also recognize that both our internal and external customers deserve timely, professional, and accurate service each and every day.

I recognize that there remain opportunities for continuous improvement in USCIS programs and engagements with all of our customers. Thank you again for your valuable feedback. I am pleased to present you with USCIS' response to the 2015 Annual Report for your further consideration. I look forward to continuing to work with you on these critical immigration matters.

Sincerely,

A handwritten signature in black ink, appearing to read "Leon Rodríguez".

Leon Rodríguez  
Director

## A Message from the Director

It is my pleasure to present the U.S. Citizenship and Immigration Services (USCIS) Response to the Citizenship and Immigration Services Ombudsman's (CISOMB) 2015 Annual Report to Congress (2015 Annual Report). In this response, we seek to address the concerns raised in the Annual Report, as well as highlight some of the many additional accomplishments of USCIS over the past year.



In her Annual Report, the Ombudsman, Ms. Maria Odom, noted many of our achievements including:

- Immigration benefits for victims of domestic violence, trafficking, and certain other crimes;
- EB-5 Immigrant Investor Program centralization within the USCIS Field Operations Directorate;
- Additional resources dedicated to the affirmative asylum backlog; and
- Our continued commitment to public engagement and development of new customer-oriented policies and initiatives such as myUSCIS.

The CISOMB also noted the agency's progress in the successful development of:

- The Task Force on New Americans as co-chair;
- Modernizing and streamlining our legal immigration system for the 21<sup>st</sup> century with the Department of State and other partners;
- Work authorization for certain H-4 spouses;
- Policy guidance clarification for L-1 intracompany transfers;
- The Central American Minors Refugee/Parole Program and the Haitian Family Reunification Parole Program; and
- "Emma," the USCIS virtual assistant that will interactively answer customer immigration questions.

I have greatly benefitted from my regular meetings with the Ombudsman, participation in the CISOMB annual conference, CISOMB-hosted meetings and teleconferences with stakeholders, CISOMB communications with USCIS leaders, and CISOMB site visits throughout the agency. We, as an agency, stand ready to work with the CISOMB to ensure that USCIS is serving our customers, stakeholders, and the American public as well as we possibly can.

Sincerely,

A handwritten signature in blue ink, appearing to read "León Rodríguez". The signature is stylized and fluid, with a large loop at the end.

León Rodríguez  
Director  
U.S. Citizenship and Immigration Services



**USCIS Response to the Citizenship and  
Immigration Services Ombudsman's  
2015 Annual Report to Congress**

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# I. Legislative Requirement

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

(f) Responsibilities of 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)<sup>2</sup> thanks the Citizenship and Immigration Services Ombudsman (CISOMB) for the thoughtful analysis provided in the *Annual Report 2015: Citizenship and Immigration Services Ombudsman* (2015 Annual Report).<sup>3</sup> USCIS appreciates the review of the agency's operations and welcomes the opportunity to respond. This response provides updates to USCIS programs and the areas of concerns raised by CISOMB, as well as the agency's accomplishments in those areas.

As noted in the 2015 Annual Report, USCIS' primary focus has been the implementation of many of the immigration reforms announced by President Obama announcement on November 20, 2014. These steps will provide significant improvement to the legal immigration system. The July 2015 White House report, *Modernizing and Streamlining our Legal Immigration System for the 21<sup>st</sup> Century*,<sup>4</sup> outlines USCIS' work with Department of Homeland Security (DHS) partners. As part of these reforms, USCIS is now providing employment authorization for certain H-4 spouses, has clarified options for L-1 intracompany transfers to the United States, is protecting additional victims of crime and human trafficking, and is reducing family separation for individuals waiting to obtain lawful permanent resident status.

USCIS has hosted 10 national engagements on various aspects of these reforms. These have included stakeholder teleconferences in English and Spanish and meetings with foreign embassies and key stakeholders to discuss deferred action for childhood arrivals (DACA), the Task Force on New Americans, visa modernization, and business enhancements. In addition, USCIS community relations officers have hosted local listening sessions and outreach events

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<sup>1</sup> See Pub. L. No. 107-296, 116 Stat. 2135 (2002); *Homeland Security Act of 2002*, available at [http://www.dhs.gov/xlibrary/assets/hr\\_5005\\_enr.pdf](http://www.dhs.gov/xlibrary/assets/hr_5005_enr.pdf).

<sup>2</sup> In this response, "USCIS" and "agency" are used interchangeably.

<sup>3</sup> See DHS Report, "Annual Report 2015: Citizenship and Immigration Services Ombudsman" (June 29, 2015), available at [http://www.dhs.gov/sites/default/files/publications/2015%20CISOMB%20Annual%20Report\\_508.pdf](http://www.dhs.gov/sites/default/files/publications/2015%20CISOMB%20Annual%20Report_508.pdf).

<sup>4</sup> See White House Report, "Modernizing and Streamlining Our Legal Immigration System for the 21<sup>st</sup> Century" (July 2015), available at [https://www.whitehouse.gov/sites/default/files/docs/final\\_vis\\_a\\_modernization\\_report1.pdf](https://www.whitehouse.gov/sites/default/files/docs/final_vis_a_modernization_report1.pdf).

across the country to share information and solicit stakeholder feedback on various executive action reforms.

USCIS is also working toward continuous efficiency improvements for current immigration programs. The 2015 Annual Report provides a fresh perspective on many of these issues. The CISOMB observations were carefully reviewed by USCIS subject matter experts and leadership in the preparation of this response. The collaborative efforts of CISOMB and USCIS will continue to ensure that the agencies' unique missions are successful.

### **III. Families and Children**

#### **A. Renewals for Deferred Action for Childhood Arrivals**

##### Accomplishments

- USCIS intensified efforts to prevent any lapses in previously approved deferred action for individuals who timely file their renewal requests and demonstrate that they continue to satisfy the guidelines to be eligible for deferred action and merit a favorable exercise of discretion. For such cases that did not present unusual circumstances, USCIS issued new Employment Authorization Documents (EAD) before the expiration of their EADs in 98.9 percent of the cases.
- USCIS updated DACA Frequently Asked Questions (FAQ) on June 15, 2015.<sup>5</sup>
- USCIS implemented a robust outreach effort to notify DACA recipients about the renewal process, including dissemination of educational materials and engagement events in multiple languages. The agency is sharing information with community and faith-based organizations, advocacy groups, educators, and legal service providers, among other stakeholders.
- As of March 27, 2015, USCIS began issuing notices to DACA recipients whose deferred action will expire in less than 180 days to remind them that to avoid a lapse in their period of deferred action, they should file a renewal request between 150 days and 120 days before the expiration date listed on their Form I-797C approval notice and EAD. This is an improvement from the previous recommended period of 100 days prior to expiration of the period of deferred action.<sup>6</sup>

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<sup>5</sup> USCIS official website, Deferred Action for Childhood Arrivals: Frequently Asked Questions, <http://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process/frequently-asked-questions> (last visited April 22, 2016).

<sup>6</sup> USCIS official website, Don't Let Your Work Permit Expire; Follow These DACA Renewal Tips, <http://www.uscis.gov/news/dont-let-your-work-permit-expire-follow-these-daca-renewal-tips> (last visited April 22, 2016).

- USCIS publishes quarterly data on the number of DACA requests received, accepted, granted, and denied.<sup>7</sup> The data posted most recently since the inception of DACA through the end of September 2015 are as follows:
  - USCIS has received 1,349,875 DACA requests. More than 82,000 of these requests were rejected and returned at the outset before being considered. Rejections may occur for a variety of reasons; for example, the DACA request submitted was incomplete or filed without fee, or the requestor failed to meet the age guideline.
  - Of the 1,267,761 DACA requests accepted by USCIS, 787,855 were initial requests and 479,906 were renewal requests.
  - Of the 787,855 initial requests, USCIS approved 699,832 and denied 51,476; 36,547 remained pending.
  - Of the 479,906 renewal requests, USCIS approved 443,103; USCIS denied 1,270; and 34,490 requests remain pending.<sup>8</sup> Denials may occur, for example, when a DACA requestor does not meet the continuous residence criteria, was deemed to pose a threat to national security or public safety, or was otherwise deemed as a discretionary matter not to warrant deferred action based on the case-by-case review of each request.

#### Expiration of DACA/EAD

The USCIS metrics show that an overwhelming number of DACA requestors are submitting renewal requests fewer than 120 days from expiration of their DACA and employment authorization.

The agency has allocated additional resources at its Nebraska Service Center (NSC) to address individual DACA requests that were delayed due to background check issues.

Individuals may submit an inquiry about the status of their renewal request after it has been pending more than 105 days. To submit an inquiry online, individuals should visit [gov.uscis.gov/e-request](http://gov.uscis.gov/e-request).<sup>9</sup>

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<sup>7</sup> USCIS official website, Data Set: Form I821D, Deferred Action for Childhood Arrivals, <http://www.uscis.gov/tools/reports-studies/immigration-forms-data/data-set-form-i-821d-deferred-action-childhood-arrivals> (last visited December 4, 2015).

<sup>8</sup> It is noted that 1,043 renewal request were administratively closed.

<sup>9</sup> USCIS official website, Reminder for Requesting DACA, <http://www.uscis.gov/news/reminder-requesting-daca> (last visited August 21, 2015).



While each DACA renewal request presents unique circumstances, and USCIS cannot discuss specific cases, delays in processing DACA renewal requests are typically due to one or more of the following circumstances:

- A requestor's failure to appear at an Application Support Center for a scheduled biometric services appointment to capture fingerprints, signature, and a photograph to produce the EAD. No-shows or reschedules require additional correspondence and processing time.
- Issues of national security, criminality, or public safety discovered during the background check process that require further vetting.
- Issues of unauthorized travel that require additional evidence or clarification.
- Name or date-of-birth discrepancies that may require additional evidence or clarification.
- The renewal submission was incomplete or contained evidence that a requestor may not satisfy the DACA renewal guidelines, leading USCIS to send the requestor a request for additional evidence (RFE) or an explanation.

USCIS has continually emphasized in public DACA materials and outreach efforts that requestors can help prevent gaps in their deferred action by:

- Filing their complete renewal requests as soon as possible, preferably within the 150- to 120-day window before their current deferred action expires;
- Including all required supporting documentation;
- Responding as quickly and thoroughly as possible to any USCIS requests for additional evidence or information; and
- Attending scheduled biometric services appointments and any interviews, if a biometrics appointment or interview notice is sent to the requestor.<sup>10</sup>

#### DACA Automatic Temporary Extension

The CISOMB urges USCIS to provide for automatic temporary extension of employment authorization upon timely receipt of a request for DACA renewal, or to take other measures to ensure that individuals previously granted DACA do not suffer the impact of

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<sup>10</sup> For example, see USCIS' [Consideration of Deferred Action for Childhood Arrivals Process/Frequently Asked Questions](https://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process/frequently-asked-questions) page online at <https://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process/frequently-asked-questions> (last visited May 23, 2015).

a lapse in employment authorization or accrue unlawful presence, both of which carry significant adverse consequences.

- On June 5, 2014, USCIS began accepting renewal requests for deferred action under the DACA process so that individuals can request and receive a renewal of their deferred action. As stated in the revised Form I-821D instructions, USCIS encourages renewal requestors to file as early in the 150-day period as possible or at least 120 days prior to the DACA expiration date. When renewal requestors file in a timely manner and timely comply with all other renewal requirements, lapses in employment documentation are highly unlikely to occur when the DACA request is approvable. There are no automatic temporary extensions for deferred action and/or employment authorization possible within the DACA process. When action is deferred under DACA, there is an expiration date to that discretionary action which is why the Secretary of Homeland Security's guidelines require filing a request for renewal. Additionally, employment authorization is granted to DACA recipients. When deferred action under DACA expires, there is no longer an underlying basis for employment authorization.

## **B. Provisional and Other Immigrant Waivers of Inadmissibility**

### Form I-601A, Application for Provisional Unlawful Presence Waiver

The CISOMB expressed concerns about summary denials of Form I-601A, *Application for Provisional Unlawful Presence Waiver*, when USCIS finds a reason to believe that the applicant may be found inadmissible at the time of his or her immigrant visa interview. The CISOMB indicated that applicants lack a forum to contest factual or legal determinations USCIS has made in the denial decision. The CISOMB also expressed concerns that RFEs do not assess the particular evidence previously submitted by the applicant. Finally, the CISOMB requested that USCIS permit Motions to Reopen/Reconsider or administrative appeals to allow for prompt correction of errors and timely processing of immigrant waivers when USCIS revises and expands the regulations governing the Provisional Waiver program.

The goal of the provisional unlawful presence waiver process is to facilitate immigrant visa issuance for immediate relatives who are admissible to the United States except for the 3-year and 10-year unlawful presence bars under section 212(a)(9)(B) of the Immigration and Nationality Act (INA), 8 U.S.C. 1182(a)(9)(B). These bars are triggered upon departure from the United States. The U.S. Department of State (DOS), not USCIS, determines if an immigrant visa applicant is eligible for an immigrant visa and whether there are any grounds of inadmissibility that may bar issuance of the immigrant visa.

If USCIS determines that there is reason to believe that the individual may be inadmissible to the United States at the time of his or her immigrant visa interview based on a ground of inadmissibility other than unlawful presence, USCIS will deny the request for the provisional unlawful presence waiver. USCIS' determination of the provisional

unlawful presence waiver is not a conclusive finding of inadmissibility. It is also not an assessment of whether a particular crime or pattern of conduct would ultimately bar an individual from obtaining a legal status under the immigration laws.

USCIS encourages applicants to submit all documentation they believe will establish their eligibility for the provisional unlawful presence waiver, and that will establish that they warrant a favorable exercise of discretion. It is the applicant's burden to establish eligibility for the waiver. If the applicant has not established eligibility, including demonstrating that his or her U.S. citizen spouse or parent would experience extreme hardship if the applicant is denied admission to the United States, USCIS officers may issue an RFE. In response to the CISOMB concerns regarding standardized language, USCIS has begun including an assessment of the evidence and arguments presented by the applicant in the RFE if additional evidence is needed to establish extreme hardship.

Regarding revisions to the program to include Motions to Reopen/Reconsider or administrative appeals, DHS initially considered this recommendation when preparing the original final rule implementing the Provisional Unlawful Presence Waiver program. *See* 78 FR 536, at 553-555 (January 3, 2013). DHS did not incorporate these options into the provisional unlawful presence waiver process at the time because DHS believed that such options would have undercut the efficiencies USCIS and DOS gained through the streamlined provisional unlawful presence waiver process. These options would also have significantly interfered with USCIS' and DOS' carefully coordinated operational agreement processes, and would have caused substantial delays in waiver and immigrant visa processing.

Additionally, DHS did not incorporate an appeals option because, among other things, appeals should be reserved for actions that are based on a comprehensive assessment of the applicant's admissibility. *See* 78 FR, at 555. A provisional waiver does not provide a comprehensive assessment because jurisdiction for immigrant visa eligibility, which includes inadmissibility, lies with DOS. If DOS denies the immigrant visa, and if the ineligibility is based on inadmissibility at the time of the immigrant visa interview, jurisdiction to review a denial of a waiver of inadmissibility is with the USCIS Administrative Appeals Office (AAO). It would have been inefficient for DHS to allow an interlocutory administrative appeal of a provisional unlawful presence waiver decision, which does not take into consideration the full inadmissibility determination or any other factor(s) that may be discovered during the course of the immigrant visa process.

USCIS is currently working on a revision to the regulations governing the provisional unlawful presence waiver process. The proposed rule was published for public comment on July 22, 2015. *See* 80 FR 43338 (July 22, 2015). The rule proposes to expand eligibility for provisional unlawful presence waivers to all foreign nationals who are statutorily eligible to obtain a waiver of the unlawful presence ground and are seeking such a waiver in connection with an immigrant visa application. USCIS anticipates the publication of the final rule later in 2016.

## C. Extreme Hardship

The CISOMB raises concerns about the extreme hardship determination when adjudicating Forms I-601A and Forms I-601, *Application for Waiver of Grounds of Inadmissibility*. Extreme hardship is not a term with a fixed and inflexible meaning. The elements to establish extreme hardship are dependent upon the facts and circumstances of each case. When USCIS assesses whether an applicant has established extreme hardship, USCIS looks at the totality of the applicant's circumstances and any supporting evidence to determine whether the qualifying relative will experience extreme hardship. USCIS cannot make a presumption of extreme hardship because the law places the burden on the applicant to demonstrate that extreme hardship would occur if the requested benefit were not granted.

As indicated in the 2015 Annual Report, the Secretary's November 20, 2014 memorandum, *Expansion of the Provisional Waiver Program*,<sup>11</sup> directs DHS to issue clarifying guidance on extreme hardship to improve consistency in adjudications. Draft clarifying guidance was issued on October 7, 2015. USCIS has reviewed all of the public comments it received and is in the process of finalizing the guidance. Additionally, USCIS directorates are working together to address possible inconsistencies in extreme hardship adjudications.

## D. Military Immigration Issues

### Military Parole-in-Place

In the CISOMB's 2015 Annual Report to Congress, the CISOMB suggested that USCIS had not shared clear field guidance regarding how USCIS evaluates and processes requests for Parole-in-Place for military family members. On November 15, 2013, USCIS issued Policy Memorandum 602-0091, *Parole of Spouses, Children and Parents of Active Duty Members of the U.S. Armed Forces, the Selected Reserve of the Ready Reserve, and Former Members of the U.S. Armed Forces or Selected Reserve of the Ready Reserve and the Effect of Parole on Inadmissibility under Immigration and Nationality Act § 212(a)(6)(A)(i)*.<sup>12</sup>

This policy memorandum (PM) provides for amending the Adjudicator's Field Manual (AFM) to ensure consistent adjudication of parole requests made on behalf of aliens who

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<sup>11</sup> See DHS Memorandum, "Expansion of Provisional Waiver Program" (November 20, 2014), available at [http://www.dhs.gov/sites/default/files/publications/14\\_1120\\_memo\\_i601a\\_waiver.pdf](http://www.dhs.gov/sites/default/files/publications/14_1120_memo_i601a_waiver.pdf).

<sup>12</sup> USCIS PM, "Parole of Spouses, Children and Parents of Active Duty Members of the U.S. Armed Forces, the Selected Reserve of the Ready Reserve, and Former Members of the U.S. Armed Forces or Selected Reserve of the Ready Reserve and the Effect of Parole on Inadmissibility under Immigration and Nationality Act § 212(a)(6)(A)(i)" (November 15, 2013), available at [https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2013/2013-1115\\_Parole\\_in\\_Place\\_Memo\\_.pdf](https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2013/2013-1115_Parole_in_Place_Memo_.pdf).

are present without admission or parole and who are spouses, children, and parents of those serving on active duty in the U.S. Armed Forces.

Additionally, the PM amends the AFM where it concerns the effects of parole on an alien's inadmissibility under the INA.

The PM builds on those important initiatives USCIS has launched in partnership with the U.S. Department of Defense (DoD).

#### Technical Corrections

USCIS respectfully offers the following technical corrections to the CISOMB's discussion on military immigration issues in its 2015 Annual Report:

- The term "MAVNI" is an acronym for "Military Accessions Vital to the National Interest";<sup>13</sup> and
- The 2015 Annual Report states that USCIS is looking into establishing co-located USCIS offices in Fort Knox, Kentucky, and Fort Sill, Oklahoma, where the DoD conducts basic training for new recruits. Fort Knox is not a basic training site and although USCIS' Louisville Field Office conducts frequent outreach in Fort Knox, USCIS has not conducted naturalization adjudications or ceremonies at this location within the past 12 months. USCIS, however, does regularly conduct seminars and other outreach engagements at various military installations across the United States, such as Fort Knox.

### **E. The Haitian Family Reunification Parole Program (HFRP)**

Invitations to apply to the HFRP Program<sup>14</sup> are issued to eligible Form I-130 petitioners whose beneficiaries' immigrant visas are expected to become available within 18 to 36 months. The first round of invitations to apply to this program was issued in March and April 2015. The second round of invitations to apply to this program was issued in November and December 2015 to the entire group of petitioners that met these criteria. In total, roughly 7,600 petitioners representing about 14,000 potential beneficiaries have been invited to apply to the program thus far. Interviews in Port-au-Prince, Haiti, began in August 2015 and the first HFRP beneficiaries arrived in the United States in September 2015.

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<sup>13</sup> DoD official website, Fact Sheet: Military Accessions Vital to the National Interest (MAVNI) Fact Sheet, <http://www.defense.gov/news/mavni-fact-sheet.pdf> (last visited April 22, 2016).

<sup>14</sup> USCIS official website, The Haitian Family Reunification Program, <http://www.uscis.gov/HFRP> (last visited April 22, 2016).

## IV. Employment

### A. The H-2 Temporary Worker Programs

USCIS has improved communication between sister agencies, participated in stakeholder engagements and contributed to various public outreach efforts.

#### Improved Communication

During the H-2B cap season (the period during which USCIS accepts H-2B petitions that are subject to the next fiscal year's cap), USCIS worked with DOS to improve information sharing in order to ensure that relevant H-2B data regarding visa issuance was communicated. This improvement provided USCIS with a more accurate number of H-2B visas issued and allowed it to better manage its responsibility to approve an appropriate number of H-2B petitions and beneficiaries within the biannual numerical cap.

#### Stakeholder Engagements and Public Outreach

In addition to improved communication between our sister agencies, USCIS has participated in various stakeholder engagements such as the annual DOS stakeholder conference, the CISOMB annual conference, and the California Service Center (CSC) Open House. USCIS joined U.S. Customs and Border Protection (CBP) for an August 24, 2015 meeting with representatives of the seafood industry in New Orleans, Louisiana, to listen to views and concerns regarding the H-2B program amongst program users in the Gulf Coast area.

USCIS has also responded to many inquiries from media outlets, stakeholders, and congressional offices regarding various aspects of the H-2B visa program.

#### Redundant RFEs

The CISOMB reported that some H-2 stakeholders believe they are receiving unnecessary or redundant RFEs scrutinizing the "temporariness" or "seasonality" of occupations. USCIS continues to strive for overall consistency in the adjudicative process and understands these stakeholder concerns. By statute, USCIS makes the determination on eligibility for the H-2 classification, including questions of temporariness and seasonality, based on the totality of the evidence provided at the time of filing. USCIS has consistently maintained that customers should file properly prepared petitions in order to avoid any type of delay in the adjudication process.<sup>15</sup>

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<sup>15</sup> As supported in the official USCIS website, Tips for Filing Forms with USCIS, <https://www.uscis.gov/forms-filing-tips> (last visited May 23, 2016).

Additionally, USCIS routinely shares filing tips at stakeholder engagements, and stakeholders are encouraged to alert the Service Center Operations Directorate (SCOPS) of any RFEs that do not appear to comply with statutory and regulatory requirements. Most recently, in response to stakeholder concerns over an increase in RFEs, USCIS issued public clarifying guidance regarding the type of information necessary to establish temporary need. (See <https://www.uscis.gov/working-united-states/temporary-workers/h-2b-non-agricultural-workers/h-2b-clarifying-guidance>). Internally, USCIS continues to provide training to officers in both the specific H-2 nonimmigrant classification and in the overall legal process, including the “preponderance of the evidence” standard. Both the California and Vermont Service Centers have undergone recent changes in staffing, and have accordingly provided H-2B related training to the new officers. Additionally, USCIS issued internal clarifying guidance regarding the H-2B program to ensure that adjudicators apply existing law correctly.

### Agents

According to Section 214.2(h)(2)(i)(F) of Title 8, Code of Federal Regulations (8 CFR), agents are permitted to file Form I-129 petitions as petitioners as long as they meet the requirements in the provision. By way of review, a U.S. agent may be:

- The actual employer of the beneficiary;
- The representative of both the employer and the beneficiary; or
- A person or entity authorized by the employer to act for, or in place of, the employer as his or her agent.

Additionally, a U.S. agent can only file an H-2 petition in cases:

- Involving workers who are traditionally self-employed;
- Involving workers who use agents to arrange short-term employment on their behalf with numerous employers; or
- Where a foreign employer authorizes the agent to act on his or her behalf.

USCIS does not currently plan to capture information on agents in its electronic case management systems while H-2 petitions remain a paper-based adjudication. USCIS has received feedback from H-2 stakeholders requesting that a specific “Designated Agent of Record” form be created just for H-2 representatives or H-2 agents. Since the provision on agent-petitioners is located in the general H provision and is not limited to only the H-2 classification, the creation of a specific form for this type of petitioner would affect agent-petitioners in other classifications as well. USCIS has established a public website to address frequently asked questions on H-2A petitions, which includes information on who may qualify as an agent for filing a petition with USCIS.<sup>16</sup>

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<sup>16</sup> USCIS official website, H-2A Petitioners Questions and Answers, <http://www.uscis.gov/news/questions-and-answers/h-2a-petitioners-questions-answers> (last visited April 22, 2016).

## H-2B Processing in the Wake of Litigation

On March 5, 2015, USCIS announced it was temporarily suspending adjudication of H-2B petitions while the Government considered the appropriate response to the court order entered on March 4, 2015, in *Perez v Perez*, No 3:14-cv-682 (N.D. Fla. Mar. 4, 2015).<sup>17</sup> The *Perez* court order vacated the Department of Labor's (DOL) H-2B regulations on the grounds that DOL had no authority under the INA to issue them. Shortly after issuance of the Court's order, DOL filed an unopposed motion to stay the Court's order until April 15, 2015. On March 17, 2015, as stated in the motion, DHS resumed adjudicating H-2B petitions based on temporary labor certifications issued by DOL.

Additionally, in response to the court decision, DOL and DHS jointly published an interim final rule<sup>18</sup> to reinstate and make improvements to the H-2B program, and a final rule<sup>19</sup> to establish the prevailing wage methodology for the program. These rules strengthen protections for U.S. workers, ensuring that they have the opportunity to find and apply for jobs for which employers are seeking H-2B workers, while also allowing employers to access foreign workers on a temporary basis.

## H-2 Interagency Working Group Findings

USCIS has been a participant of the H-2 Interagency Working Group with the CISOMB, DOL, and DOS, and has discussed a variety of topics affecting the H-2 programs. During the course of the meetings, USCIS listened to some of the challenges that are unique to the H-2 classification and clarified the petition process from initial intake to final adjudication, as appropriate. USCIS also was able to note which steps in the adjudicative process involve other agencies, such as the consular return process, and explain how adequate time is needed in order to ensure that each petition is given full and fair consideration consistent with all applicable laws, rules, and regulations.

Specifically, one of the stakeholder concerns of which USCIS took note was the requirement that a Form I-129 H-2B petition be submitted with a temporary labor certification (TLC) that bears original signature(s). This modification in procedure occurred as a result of the changes to the DOL iCERT Visa Portal, which took place on October 15, 2012. When DHS and DOL published the joint Interim Final Rule on April 29, 2015, DHS and DOL eliminated the requirement that the TLC be submitted

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<sup>17</sup> USCIS official website, USCIS Temporarily Suspends Adjudications of H-2B Petitions Following Court Order, <http://www.uscis.gov/news/uscis-temporarily-suspends-adjudication-h-2b-petitions-following-court-order> (last visited April 22, 2016).

<sup>18</sup> See Interim Final Rule, "Temporary Non-Agricultural Employment of H2B Aliens in the United States" (April 29, 2015), available at <https://www.federalregister.gov/articles/2015/04/29/2015-09694/temporary-non-agricultural-employment-of-h-2b-aliens-in-the-united-states>.

<sup>19</sup> See Final Rule, "Wage Methodology for the Temporary Non-Agricultural Employment H-2B Program" (April 29, 2015), available at <https://www.federalregister.gov/articles/2015/04/29/2015-09692/wage-methodology-for-the-temporary-non-agricultural-employment-h-2b-program>.



with the “original signature.” As a result, H-2B petitions may now be submitted to USCIS with an original TLC on blue security paper, but with a signed copy of Appendix B (the signature page of the TLC).

USCIS looks forward to continuing the H-2 Interagency Working Group and continuing to create professional and transparent programs.

#### Prioritizing H-2B Petitions

USCIS wishes to clarify the H-2B petition process as the 2015 Annual Report states that H-2B filings are not prioritized. Unlike other classifications, there is no overarching regulatory requirement that provides a specific timeframe in which H-2B petitions must be completed. Instead, USCIS has established internal processing goals and H-2B petitions are generally adjudicated in a time-sensitive fashion. Processing times are routinely updated on the USCIS website. Since each petition is adjudicated on a case-by-case basis, however, some petitions may require additional review as needed. As noted in the 2015 Annual Report, the H-2B classification is also eligible for the premium processing service, which means that an adjudicative action will take place within 15 calendar days. The vast majority of H-2B petitions utilize premium processing. The availability of premium processing is intended to help petitioners receive a decision in an expedited manner.

#### H-2B Electronic Processing

The CISOMB also expressed concern that the H-2B program is a paper-based adjudicative process, and emphasized that USCIS should enhance its electronic case processing and communication.

USCIS understands the time-sensitive nature of H-2B non-agricultural work, and continues to adjudicate cases in a time sensitive fashion and within the premium processing timeframe, as applicable. In addition, USCIS has engaged in discussions with the USCIS Office of Transformation Coordination (OTC) about the inclusion of H-2B petitions in the USCIS Electronic Immigration System. USCIS will continue to keep the affected public informed of program developments.

## **B. High-Skilled Adjudications Issues**

USCIS received a record number of H-1B cap-subject petitions (H-1B petitions subject to the upcoming fiscal year’s numerical cap) for Fiscal Year (FY) 2016, totaling nearly 233,000 during the 5-business-day filing period, which began April 1. This total also included petitions filed for the advanced degree exemption from the cap. On May 4, 2015, USCIS announced it had successfully completed data entry of all FY 2016 H-1B cap-subject petitions that were selected in the computer-generated random selection process. On July 14, 2015, USCIS announced that it completed processing the return of FY 2016 H-1B cap-subject petitions that were not selected in the computer-generated random selection process.

On March 24, 2015, USCIS posted PM-602-0111, *L-1B Adjudications Policy*, for public feedback.<sup>20</sup> During the feedback period, which ended on May 8, 2015, USCIS received 31 comments. USCIS reviewed and considered the feedback from stakeholders prior to issuing the final PM on August 17, 2015.<sup>21</sup> Additionally, USCIS hosted a conference at the CSC, which included participants from DOS and CBP, that provided training consistent with the PM.

#### Use of the Occupational Outlook Handbook (OOH) in H-1B Adjudication

USCIS is currently in the process of creating a policy manual for the H-1B classification that, in part, clarifies the proper standards for using various tools such as the OOH and the deference that should be afforded such materials.

#### Requests for Evidence (RFE) Rates

While USCIS has noted previously that a 100-percent review of all RFEs is not operationally feasible, the agency continues to stress that all decisions made by newly trained officers, including the issuance of RFEs, are reviewed until the officer demonstrates adjudicative proficiency in the classification. SCOPS regularly conducts quality analysis on all RFEs.

USCIS continues to work diligently to ensure that appropriate and consistent adjudication, including the proper issuance of RFEs for the H-1B and L-1 workloads, takes place at the service centers. USCIS has not detected any significant spikes in RFE rates as they relate to the H-1B classification. Additionally, a review of the CISOMB's H-1B RFE Rate Graph in the 2015 Annual Report shows that RFE rates for the H-1B classification appear to have remained fairly consistent over the last 4 fiscal years (2010-2014). As noted in our response to the FY 2014 report, it is common for RFE rates to slightly increase during H-1B cap season, as most petitions are for initial employment and thus may require additional evidence to establish the beneficiary's eligibility.

Finally, in response to concerns about L-1B RFEs, USCIS posted, on July 17, 2015, a draft L-1B RFE template on its website for public feedback.<sup>22</sup> The feedback period concluded on July 31, 2015. USCIS received seven comments from the public, which were reviewed and considered prior to finalizing the current L-1B RFE template.

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<sup>20</sup> See USCIS PM for Feedback, "L-1B Adjudications Policy," PM-602-0111 (March 24, 2015), available at <http://www.uscis.gov/sites/default/files/USCIS/Outreach/Draft%20Memorandum%20for%20Comment/2015-0324-Draft-L-1B-Memo.pdf>.

<sup>21</sup> See USCIS PM, "L-1B Adjudications Policy," PM-602-0111 (August 17, 2015), available at [http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2015/L-1B\\_Memorandum\\_8\\_14\\_15\\_draft\\_for\\_FINAL\\_4pmAPPROVED.pdf](http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2015/L-1B_Memorandum_8_14_15_draft_for_FINAL_4pmAPPROVED.pdf).

<sup>22</sup> See USCIS Draft Template for Comment, "L-1B RFE Notice" (July 17, 2015), available at <http://www.uscis.gov/sites/default/files/USCIS/Outreach/Draft%20Request%20for%20Evidence%20%28RFE%29%20Template%20for%20Comment/PED-Specialized-Knowledge-L1B-RFE-Template-2015.pdf>.

On August 17, 2015, USCIS also issued a PM that provides guidance on the adjudication of the L-1B classification, permitting multinational companies to transfer employees who possess “specialized knowledge” from their foreign operations to their operations in the United States. It provides consolidated and authoritative guidance on the L-1B program, superseding and rescinding certain prior L-1B memoranda. This memorandum also updates the AFM by replacing AFM chapter 32.6(e) with the version included in this memorandum.

### L-1B Extensions

The CISOMB cites a report<sup>23</sup> indicating that USCIS denies L-1B extension petitions more often than it denies initial L-1B petitions. There are several factors that may make the adjudication of an L-1B extension petition different from the adjudication of a petition for initial L-1B status. USCIS notes that many L-1 beneficiaries apply for visas associated with approved “blanket” L petitions, which allow them to present their initial petitions for L-1 classification at U.S. consulates. In such cases, USCIS’ first opportunity to review the L-1B worker’s qualifications and actual duties does not occur until the time a petition to extend the worker’s L-1B stay is filed. L-1B petitions also may be adjudicated by CBP at a port of entry or designated pre-flight inspection station. Here too, USCIS’ first opportunity to review the worker’s qualifications may not occur until the time an extension request has been filed. In some cases, USCIS may determine at the extension stage that, based on facts not available to the DOS consular officer or CBP inspector at the initial petition stage, the extension petition may not be approvable.

In addition, some L-1B employees initially obtain their status based upon a “new office” petition, which is prospective in nature and granted before a business entity is fully operational. After 1 year, if an extension is desired, the petitioner is required to file for an extension and establish that it has been able to meet the objectives set forth in the initial petition. In some cases, USCIS may determine that the extension petition may not be approvable.

As applicable, USCIS continues to give deference to prior USCIS determinations in petitions requesting extension of L-1B status, as directed in the William R. Yates memo of April 23, 2004,<sup>24</sup> as long as there was no material error in the previous approval, there has been no substantial change in circumstances, and there is no new material information impacting the petitioner’s or beneficiary’s eligibility, if such objectives are not met.

### Preponderance of the Evidence

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<sup>23</sup> National Foundation for American Policy, “L-1B Denial Rate Increases Again for High Skill Foreign Nationals” (March 2015); <http://nfap.com/wp-content/uploads/2015/03/NFAP-Policy-Brief.L-1-Denial-Rates-Increase-Again.March-20151.pdf> (accessed May 25, 2016).

<sup>24</sup> Memorandum from William R. Yates, Associate Director for Operations, U.S. Citizenship and Immigration Services, *The Significance of a Prior CIS Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity*, HQOPRD 72/11.3 (April 23, 2004).

As noted in the CISOMB report, USCIS has accepted the recommendation to develop new training materials for adjudicators on the “preponderance of the evidence” legal standard. Furthermore, USCIS’ SCOPS created an internal working group in August 2014 that is developing hypothetical case scenarios for specific form types and classifications that are based on real life examples to augment the current preponderance of evidence training. The working group has completed development of hypothetical scenarios for the E11 and the E21 immigrant classifications and the B-1, B-2, O-1, P-1, and P-3 nonimmigrant classifications. Hypothetical scenarios for the L-1B, F-1, and J-1 classifications are presently under review at SCOPS Headquarters. The working group is in the process of creating scenarios for the E12 and E13 immigrant classifications.

## C. The EB-5 Immigrant Investor Program

### Processing Times

As the CISOMB noted in the 2015 Annual Report, USCIS has experienced a tremendous surge in EB-5 applications and petitions in recent years. As of March 8, 2016, there were more than 800 approved regional centers, a 37-percent increase from the number of regional centers that existed at the close of FY 2014. Between FY 2014 and FY 2015, receipts of Form I-526, *Immigrant Petition by Alien Entrepreneur*, increased by approximately 32 percent from 10,923 to 14,373, while receipts for Form I-829, *Petition by Entrepreneur to Remove Conditions*, increased by approximately 10 percent from 2,516 to 2,767. During this same time period, receipts of Form I-924, *Application for Regional Center under the Immigrant Investor Pilot Program*, increased by approximately 190 percent from 277 to 803.

In response to the significant increase in application and petition receipts, USCIS has taken many actions to improve overall efficiency, including:

- **Concentrating resources to review and adjudicate aging cases.** With this effort, the Immigrant Investor Program Office (IPO) has reduced the number of aging cases—those outside of processing time—and continues to focus on reducing processing times.
- **Continuing to hire additional adjudicators and economists to reduce the backlog.** As of December 2015, IPO is staffed with 110 full-time employees and is recruiting and hiring to reach its FY 2016 approved staffing level of 171 by the end of calendar year 2016.
- **Nearly doubling the number of adjudicative actions between the 2nd and 3rd quarter of FY 2015.** USCIS anticipates that the additional staff coupled with improved efficiencies will increase the number of actions taken and result in decreased processing times.

USCIS is aware of the potential implication of processing time delays, but notes that existing regional centers are permitted to utilize strategies such as bridge or temporary

financing—as described in USCIS’ May 30, 2013 EB-5 Adjudications Policy Memorandum<sup>25</sup>—to help mitigate the impact of delays as USCIS works diligently to improve processing times.

USCIS continues to engage its customers through frequent stakeholder engagements, informing them of operational updates, offering suggestions for avoiding adjudicative delays, and providing the latest statistics on each form type. Improvements made operationally and through regularly scheduled engagements with stakeholders will, over time, reduce delays in processing of EB-5 applications and petitions.

### Stakeholder Engagement

In 2014, IPO established the Stakeholder Engagement Branch, a team dedicated to promoting and enhancing stakeholder engagements with EB-5 customers and the public-at-large. As of December 2015, the branch has facilitated more than 25 engagements for both internal and external stakeholders. These national engagements highlight USCIS’ efforts to increase staffing levels, reduce the backlog, and promote opportunities for customers to submit questions, concerns or comments regarding the EB-5 program.

In FY 2015, IPO launched two new series of engagements, in addition to IPO’s ongoing EB-5 engagement efforts, to increase dialogue with the EB-5 community. In February 2015, IPO introduced “EB-5 Interactive,” which provides thoughtful examination of specific areas of the EB-5 adjudicative process based on officers’ observations and customer feedback. IPO held two successful interactive engagements by teleconference, each with more than 600 participants. USCIS posts written remarks following engagements to its website to increase public awareness and program transparency. Stakeholders can provide input into upcoming interactive topics by submitting suggestions and voting using the agency’s online IdeaScale Community portal. This helps target discussions on those areas most important to the EB-5 community.

In addition, USCIS introduced “EB-5 In-Touch.” These engagements allow USCIS to meet in-person with national, state, and local government agencies and other stakeholders to increase awareness of the program and hear directly from a broader segment of the community. The next EB-5 In-Touch engagement is planned for Miami, Florida, in July 2016.

### EB-5 Visa Queues

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<sup>25</sup> See USCIS PM, “EB-5 Adjudications Policy” (May 30, 2013), available at [https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2013/May/EB-5%20Adjudications%20PM%20\(Assessment%20of%20the%20EB-5%20Program%20-%20Final%20-%202013-13\).pdf](https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2013/May/EB-5%20Adjudications%20PM%20(Assessment%20of%20the%20EB-5%20Program%20-%20Final%20-%202013-13).pdf).

Following DOS' announcement in the May 2015 Visa Bulletin that the EB-5 visa category has become oversubscribed for individuals born in mainland China, USCIS published draft policy on EB-5-related visa issues that addressed visa queues and cutoff dates. The draft PM, *Guidance on the Job Creation and Sustainment of the Investment for EB-5 Adjudication of Form I-526 and Form I-829*,<sup>26</sup> was made available to the public on August 10, 2015, to allow stakeholders an opportunity to provide feedback regarding the adjudication of the job creation and investment sustainment requirements, two key eligibility requirements that may be significantly impacted by visa cut off dates. USCIS intends to incorporate the final policy into the EB-5 policy manual section to be published in FY 2016.

#### Addressing Abuse and Increasing Integrity in the EB-5 Program

USCIS thanks the CISOMB for noting USCIS' collaborative partnerships with Federal agencies and its termination of several regional centers, as these directly tie into USCIS' efforts to increase program integrity. USCIS continues to focus on collaborative partnerships and EB-5 regulatory compliance in its efforts to identify and remove bad actors from the EB-5 stakeholder community. Recent and ongoing efforts include:

- **Hosting an EB-5 interagency symposium.** In September 2014, USCIS hosted representatives from more than 20 Federal agencies to encourage collaboration among the Government partners that have a stake in the EB-5 program.
- **Removing regional centers that no longer meet program requirements.** USCIS terminated more regional centers in FY 2014 than in the prior history of the program. The number of regional centers terminated in FY 2015 exceeded all prior terminations through FY 2014.
- **Creating a unit that is dedicated to increasing regional center compliance.** IPO expects this unit will be fully staffed by the end of June 2016.

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<sup>26</sup> See USCIS Draft PM, "Guidance on the Job Creation Requirement and Sustainment of the Investment for EB-5 Adjudication of Form I-526 and Form I-829" (August 10, 2015), available at [http://www.uscis.gov/sites/default/files/USCIS/Outreach/Draft%20Memorandum%20for%20Comment/PED-Draft Policy Memo Guidance on the Job Creation Requirement and Sustainme.pdf](http://www.uscis.gov/sites/default/files/USCIS/Outreach/Draft%20Memorandum%20for%20Comment/PED-Draft%20Policy%20Memo%20Guidance%20on%20the%20Job%20Creation%20Requirement%20and%20Sustainme.pdf).

- **Continuing to train IPO staff to increase awareness and understanding of potential fraud schemes and scenarios that might be found in the EB-5 program.**

USCIS understands the impact that fraud can have on legitimate investors and will take into consideration CISOMB's suggestion to allow victims of fraud to reinvest and retain their original priority date when developing new regulations for the program.

Additionally, USCIS implemented the EB-5 protocols shared during Secretary of Homeland Security Jeh Johnson's testimony before the Senate Committee on the Judiciary on April 28, 2015.<sup>27</sup> This directive mandates training for all DHS employees and contractors who handle EB-5 cases and provides specific guidance on how senior managers must respond when asked to intervene in EB-5 cases. These protocols address concerns that were raised in the DHS Office of Inspector General's report<sup>28</sup> and were fully implemented as of October 1, 2015.

## **D. Employment Authorization Document (EAD) Processing**

USCIS' SCOPS successfully implemented the new H-4 EAD category for spouses of certain H-1B nonimmigrants. In addition, the Field Operations Directorate (FOD) successfully expanded the Employment Authorization expedited processing capabilities for the Cuban-Haitian Entrant Program, from 1 to 12 field offices last year, thus significantly reducing time and costs related to travel for participants.

In FY 2015, of the Form I-765 applications received, USCIS has achieved the goal of 90 days or less in 82 percent of the cases even though significantly more EAD requests were received than in the past. USCIS also works closely with applicants (and representatives) to provide employment authorization to students, humanitarian relief applicants, and a variety of other stakeholders.

USCIS works diligently to provide an adjudicative response for each request for employment authorization within the time periods stated in regulations. As noted, however, USCIS has experienced an increase in the number of Form I-765 receipts. In the first half of FY 2015, USCIS received almost as many requests for employment authorization as it did for all of FY 2014.<sup>29</sup> When cases approaching the regulatory period are identified, processing steps are in place to adjudicate them as expeditiously as possible.

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<sup>27</sup> DHS official website, Written Testimony of DHS Secretary Jeh Johnson for a Senate Committee on the Judiciary hearing titled "Oversight of the Department of Homeland Security" (April 28, 2015), <http://www.dhs.gov/news/2015/04/28/written-testimony-dhs-secretary-jeh-johnson-senate-committee-judiciary-hearing> (last visited April 22, 2015).

<sup>28</sup> See DHS Office of Inspector General (OIG), *Investigation into Employee Complaints about Management of U.S. Citizenship and Immigration Services' EB-5 Program*, (Washington, DC, March 24, 2015), available at [https://www.oig.dhs.gov/assets/Mga/OIG\\_mga-032415.pdf](https://www.oig.dhs.gov/assets/Mga/OIG_mga-032415.pdf).

<sup>29</sup> Total Form I-765 receipts were 2,030,896 from October 2014 through September 2015, compared to 1,370,404 for FY 2014.

If an applicant's Form I-765 has been pending more than 75 days, the applicant may contact the National Customer Service Center (NCSC) at 1-800-375-5283 and ask that an Approaching Regulatory Timeframe service request be created. The NCSC will route the service request to the appropriate office for review.

Customers who are interested in the status of their application may also contact the NCSC. While the USCIS website explains application pendency times, inquiries may include those by customers not aware of the regulatory timeframe as well as inquiries from customers for whom the regulatory period has been stopped or reset due to the issuance of an RFE, background check issue, or another matter. Customers are also able to make an InfoPASS appointment with a field office for an in-person inquiry on the status of their EAD.

## **E. Employment-Based Immigrant Petition Processing**

Employment-based immigrant petition processing is an area that has received significant agency attention in FY 2015. Secretary Johnson's November 20, 2014 Memorandum, *Policies Supporting U.S. High-Skilled Businesses and Workers*,<sup>30</sup> directed USCIS to develop new policies and regulations to improve the employment-based immigration system in a number of areas. Many of the specific initiatives aim to improve aspects of the employment-based immigration process that the CISOMB expressed concerns about in its 2015 Annual Report to Congress. USCIS components have been working diligently to develop and implement the Secretary's directives outlined in this memorandum. USCIS is committed to modernizing and streamlining the employment-based immigrant visa process. However, as the CISOMB notes, many of the delays in employment-based immigration are the result of congressionally mandated employment-based visa caps. USCIS continues to provide technical assistance to members of Congress seeking to improve immigration laws.

### Specific SCOPS Initiatives

In addition to assisting with the initiatives related to the President's Executive Actions on Immigration, SCOPS has continued to explore ways to improve the efficient processing of Form I-140, *Immigrant Petition for Alien Worker*. In FY 2015, SCOPS began working with the relevant service centers to transition all Form I-140 adjudicative notices to the Enterprise Correspondence Handling Online (ECHO) system. This project involves a concerted effort between SCOPS and the service centers to develop consistent Form I-140 standards for all Form I-140 classifications and every type of Form I-140 adjudicative notice. SCOPS believes the implementation of the ECHO system will improve the consistency and efficiency in which Form I-140 adjudicative notices are handled. Furthermore, the transition of Form I-140 correspondence to the ECHO system will allow SCOPS and the service centers to electronically retrieve and analyze more

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<sup>30</sup> See DHS Memorandum, "Policies Supporting U.S. High-Skilled Businesses and Workers" (November 20, 2014), available at [http://www.dhs.gov/sites/default/files/publications/14\\_1120\\_memo\\_business\\_actions\\_1.pdf](http://www.dhs.gov/sites/default/files/publications/14_1120_memo_business_actions_1.pdf).



detailed data on various Form I-140 adjudicative notices such as RFEs and denial notices, which will help SCOPS and the service centers identify Form I-140 adjudicative trends.

In FY 2015, SCOPS participated in an agency-wide initiative to develop comprehensive training regarding the preponderance of the evidence standard. The training not only provided general guidance on the preponderance of evidence standard, but also provided preponderance of the evidence training using practical exercises specific to individual form types, including Form I-140 petitions. SCOPS believes the preponderance of evidence training will be extremely beneficial to Form I-140 adjudicators, and will lead to greater consistency in Form I-140 adjudications overall.

#### Form I-140 Processing Times

USCIS strives to adjudicate all Form I-140 petitions in a timely manner. During FY 2015, the Texas Service Center (TSC) reorganized its Employment Based Division with the goal of improving efficiency in the adjudication of Form I-140 petitions and employment-based Form I-485 applications. Additionally, the Form I-140 workload was rebalanced between the TSC and NSC in FY 2015 in an effort to better align workload volumes with existing service center resources. Through the first 9 months of FY 2015, USCIS received approximately 14,000 more Form I-140 petitions than during the same time period in FY 2014.

While USCIS strives to process all Form I-140 petitions within the public processing time goals, there are a variety of reasons why some Form I-140 petitions may take longer to process than the processing times posted on the USCIS website. USCIS must balance the important goal of timely processing Form I-140 petitions with the equally important goal of ensuring that legally correct decisions are rendered in each case. Some Form I-140 petitions require more time to review to ensure the proper decision is made and the integrity of the employment-based immigrant visa process is maintained. SCOPS will continue to explore ways to improve the efficient processing of Form I-140s.

#### Petition Upgrades and Downgrades

When considering modifying the initial basis of eligibility for filing a pending Form I-485 application to a different basis of eligibility, USCIS service centers use the guidance set out in the Michael A. Pearson memo of May 9, 2000.<sup>31</sup> USCIS service centers also rely on guidance in AFM Section 23.2(1)(2).

USCIS service centers have several processes in place to identify petitions for upgrade or downgrade. The service centers use the Service Request Management Tool (SRMT),

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<sup>31</sup> Memorandum from Michael A. Pearson, Executive Associate Commissioner  
Office of Field Operations, Immigration and Naturalization Service, *Transferring Section 245 Adjustment Applications to New or Subsequent Family or Employment-Based Immigrant Visa Petitions*, HQ70/23.1-P, HQ 70/6.13P (May 9, 2000).

created based on customer inquiries, to initiate reviews of particular cases. In addition, the service centers use monthly system sweeps of pending Form I-485 applications, from both the principal applicant and/or derivative spouse, that may be associated with other Form I-140 petitions to identify cases where a different basis for eligibility may apply. Once identified, the standard procedure to handle petition upgrades and downgrades is that if the Form I-485 principal applicant or derivative spouse has another Form I-140 that will afford him or her another classification and priority date that is more favorable in obtaining an immigrant visa, then USCIS will consider that Form I-485 adjudication ready if the priority date is current, and the application will be routed to a service officer for adjudication.

USCIS does not have a centralized process whereby USCIS can respond to all applicant requests for an upgrade or downgrade change. In many instances, USCIS will only be able to determine the eligibility of a specific pending Form I-485 for a petition upgrade or downgrade at the time of adjudication. The approval of the application is USCIS' response that the upgrade/downgrade request was granted. An SRMT provides a response to the applicant that we received the request, but it does not state whether the request was granted.

#### Applicant's Rights and Approved I-140 Petitions

As the CISOMB notes in her report, USCIS is currently reviewing the issue of whether beneficiaries of certain immigrant visa petitions may have legal standing to participate in the administrative adjudication process.

Also, on April 7, 2015, the AAO posted a public solicitation for *amicus curiae* briefs on this topic<sup>32</sup> and is currently reviewing submitted briefs.

#### Clarification on Certain EB-3 Form I-140 Data in the Ombudsman's Report

USCIS believes the FY 2014 EB-3 Form I-140 data listed in Table 3.3 on page 51 of the CISOMB report is inaccurate. Based on internal data regarding I-140 EB-3 approval rates, data for FY 2014 shows an approval rate of 93 percent, which differs significantly from the 18-percent approval rate reflected in the 2015 Annual Report. SCOPS believes this new data represents a more accurate picture of the EB-3 approval and denial rates for FY 2014. Therefore, USCIS finds that valid inferences cannot be made based on the EB-3 data contained in Tables 3.3 and 3.5. USCIS does not agree that there has been a significant spike in revocations or denial notices for EB-3 Form I-140 petitions as a whole. Additionally, USCIS is not aware of any significant spikes in revocations or denial notices for the three individual classifications within the EB-3 category (Professionals, Skilled Workers, and Other Workers).

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<sup>32</sup> USCIS official website, Request for Amicus Brief, <http://www.uscis.gov/sites/default/files/USCIS/About%20Us/Directorates%20and%20Program%20Offices/AAO/3-27-15-AAOamicus.pdf> (last visited April 22, 2015).

## V. Humanitarian

### A. Special Immigrant Juveniles

The CISOMB detailed ongoing concerns with the Special Immigrant Juvenile (SIJ) program that included inconsistencies in the application of USCIS' consent function, processing times, and interviewing practices that are not age-appropriate. In addition, the CISOMB announced the intent to issue formal recommendations to USCIS including: (1) centralize SIJ adjudication to improve the quality and consistency of decisions;<sup>33</sup> and (2) issue updated regulations to clarify policy guidance and the limitations of USCIS' consent function.

#### SIJ Accomplishments

During FY 2015, USCIS received a total of 11,500 SIJ-based Form I-360 petitions, of which 8,739 were approved and 412 denied. The filings for FY 2015 substantially increased from FY 2014 when there were 5,776 filings, of which 4,606 were approved and 247 were denied.<sup>34</sup>

In FY 2015, USCIS continued to expand the SIJ outreach initiative with the intent to educate state juvenile court judges and child-welfare professionals about the SIJ program, including the role of state juvenile courts and the role of USCIS. Informational resources aimed specifically at juvenile court judges and child-welfare professionals have been made available on the SIJ pages of the USCIS website. One goal of the outreach effort is to ensure that juvenile court stakeholders understand the current requirements for SIJ eligibility, including guidelines for juvenile court orders, and to decrease the number of RFEs and Notices of Intent to Deny (NOID) issued by USCIS in relation to SIJ petitions.

On June 25, 2015, USCIS published updated guidance on the implementation of the Special Immigrant Juvenile *Perez-Olano* Settlement Agreement.<sup>35</sup> The guidance provides detailed instructions for handling certain cases that were denied for age-related reasons. The instructions provide a mechanism for denied cases of class members that meet the eligibility requirements to be reopened and reconsidered.

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<sup>33</sup> The CISOMB noted recent awareness of USCIS' intent for centralization but remained concerned that, even with centralization, USCIS will still need to provide service officers with the appropriate tools and techniques including the correct legal standards of the review of the petition and underlying principles associated with this vulnerable category.

<sup>34</sup> It is noted the number of approvals and denials in a given fiscal year will not total the number of fiscal year filings, as not all of the filings are adjudicated in the same fiscal year.

<sup>35</sup> See PM-602-0117.

## SIJ Centralization

Since June 2015, USCIS has taken steps to centralize the processing of Form I-360 SIJ petitions and Form I-485 SIJ-based adjustment of status applications. Centralization means that both SIJ-based Form I-360 and Form I-485 will be adjudicated at one central location, with USCIS retaining the discretion to interview petitioners as needed. USCIS is currently working on the organizational planning necessary for the transition. Centralization will allow USCIS to improve consistency in the SIJ program, including consistency in which cases USCIS requires an interview, and will provide an enhanced ability to monitor cases and track processing times. Centralization of the SIJ program will provide the agency with a better ability to identify inconsistencies and to enhance the integrity of the program.

## SIJ Guidance and Regulations

USCIS will issue clarifying SIJ policy guidance in the USCIS policy manual. This forthcoming guidance on SIJ classification will provide one set of consolidated and comprehensive policies on SIJ classification. It will include additional clarification on USCIS policies related to the consent function. USCIS estimates that this policy guidance will be issued in 2016. Once published, this policy guidance will be available on the USCIS website for comment.

USCIS is also in the process of amending its regulations governing the SIJ classification and related applications for adjustment of status. The final rule will implement updates to eligibility requirements and other changes made by the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008). Information on the estimated timeline for publication can be found in the *Unified Agenda of Federal Regulatory and Deregulatory Actions*,<sup>36</sup> which is published on a biannual basis by the Office of Management and Budget (OMB).

## USCIS' Consent Function in SIJ Adjudications

The TVPRA 2008 simplified but did not remove the consent requirement in SIJ adjudications.<sup>37</sup> USCIS must determine if the child meets the statutory requirements for SIJ classification under *federal* immigration laws; while the state juvenile court makes child-welfare related findings<sup>38</sup> under *state* law. USCIS no longer expressly consents to the juvenile court order but rather reviews the order as part of the determination that the eligibility requirements have been met. USCIS continues to interpret its consent function in line with the congressional history from when the term “consent” was first added to the statute. USCIS will consent to SIJ classification when it is determined that the request for SIJ classification is bona fide, which means the court order was sought for relief from

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<sup>36</sup> OMB official website, Current Unified Agenda of Regulatory and Deregulatory Actions, <http://reginfo.gov/public/do/eAgendaMain> (last visited August 21, 2015).

<sup>37</sup> See INA 101(a)(27)(J)(iii).

<sup>38</sup> Defined as legal decisions. See Merriam-Webster's Dictionary <http://www.merriam-webster.com/>.

abuse, neglect, or abandonment and not sought solely or primarily to obtain an immigration benefit.<sup>39</sup> USCIS does not determine whether or not a child has been abused, abandoned, or neglected, nor does it reweigh the evidence to form independent conclusions about what is in a child's best interests. Orders that include or are supplemented by a reasonable factual basis for the required findings will usually be sufficient to establish eligibility. The juvenile court findings need not be overly detailed, but must reflect that the court made an informed decision for each of the required findings.

## **B. The Affirmative Asylum Backlog**

Currently, no timeline is available for the elimination of the affirmative asylum backlog. In FY 2015, the USCIS Asylum Division continued to implement a strategy of program growth and streamlining. The primary goals of this strategy are to reach a capacity sufficient to process all new projected receipts of affirmative asylum applications and to reduce growing case backlogs. The Asylum Division received approval in FY 2015 to hire an additional 150 officers. Affirmative asylum receipts continue to increase, including a steady receipt of affirmative asylum applications filed by unaccompanied minors.

The Asylum Division is also experiencing surges in credible-fear and reasonable-fear referrals originating at the southwest border. Currently, between 40 to 50 Asylum Division personnel (including 30 asylum officers) are continuously detailed at two Family Residential Facilities to conduct these screenings. In addition, the Asylum Division pledged 200 detailees available to the Refugee Affairs Division in support of the Administration's commitment to increase refugee admissions this fiscal year.

## **C. Immigration Benefits for Victims of Domestic Violence, Trafficking, and Certain Other Crimes**

USCIS thanks the CISOMB for leadership of the Blue Campaign, the unified voice for DHS's efforts to combat human trafficking. USCIS' humanitarian programs provide critical relief and protection to victims of certain crimes. USCIS appreciates the sensitive nature of these cases and values this work. Despite substantial increases in the number of receipts, USCIS strives to provide quality and timely service. To ensure these goals are met, USCIS monitors staffing levels and provides ongoing training to officers and engages with external stakeholders.

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<sup>39</sup> H.R. Rep. No. 105-405, at 130 (1997).

## Officer Training

USCIS continues to train officers on adjudicative issues and offers them unique trainings from non-USCIS entities to ensure they understand the sensitive dynamics associated with domestic violence, crime victimization, and human trafficking, as well as the role of immigration relief in victim safety.

The Vermont Service Center (VSC) provides form-specific training to officers assigned to the humanitarian workload, which includes:

- Form I-914, *Application for T Nonimmigrant Status*;
- Form I-918, *Petition for U Nonimmigrant Status*;
- Form I-485, *Application to Register Permanent Residence or Adjust Status*;
- Form I-360, *Petition for Amerasian, Widow(er), or Special Immigrant*;
- Form I-765, *Application for Employment Authorization*;
- Form I-539, *Application to Extend/Change Nonimmigrant Status*;
- Form I-192, *Application for Advance Permission to Enter as Nonimmigrant*;
- Form I-929, *Petition for Qualifying Family Member of a U-1 Nonimmigrant*;
- Form I-751, *Petition to Remove Conditions on Residence*; and
- Form I-290B, *Notice of Appeal or Motion*.

During these trainings, VSC provides an overview of the laws and regulations that pertain to the form adjudications as well as the processing procedures involved. Specific form type training consists of classroom presentations, mentoring, and regularly scheduled roundtables.

New officers are also assigned a mentor. After the initial training period, the trainees continue to work with their mentors for an extended period of time. During that time, the mentors review and assist the trainees in drafting RFEs, NOIDs, and denials. The trainees continue to receive support long after the formal training period has ended.

Also, new officers receive an internal domestic violence training that provides an overview of the dynamics of domestic violence and its impact on individuals, society, and adjudications. In addition, officers and supervisors receive training from outside sources as opportunity and circumstances permit. In January 2015, all T/U/VAWA<sup>40</sup> officers received training from a domestic violence non-profit organization as well as the Equal Employment Opportunity Commission (EEOC), and a state law enforcement officer. During this training session, domestic violence dynamics, substantial harm, workplace crimes, and legislative history were all addressed.

The VSC has recognized the impact of this particular workload on officers, supervisors, and managers. As a result, in April 2015, officers and supervisors received training on vicarious trauma by two trained psychologists in the private sector. Vicarious trauma

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<sup>40</sup> Violence Against Women Act (VAWA).

(sometimes referred to as “secondary trauma”) is typically defined as the stress resulting from helping or wanting to help a traumatized or suffering person or the cumulative transformative effect of working with survivors of traumatic life events. The psychologists provided an overview of what vicarious trauma is, how to recognize it, and tools for coping with it. By raising awareness of secondary trauma, it is expected that officers and supervisors will be better equipped to recognize and respond to the effects that it can have. Leadership is planning to implement ongoing training of this type for officers, supervisors, and managers.

USCIS has also developed a Form I-751, Abuse Waivers Training for Immigration Service Officers, pursuant to the CISOMB recommendation *Improving the Process for Removal of Conditions on Residence for Spouses and Children*.<sup>41</sup>

### Stakeholder Engagements

USCIS was active in various community and stakeholder events throughout the year:

- USCIS held 12 engagements on T nonimmigrant status (T visas), U nonimmigrant status (U visas), and relief under VAWA for stakeholders during FY 2015. The stakeholder audience typically includes a broad cross-section of attorneys, victim advocates, community organizations, Board of Immigration Appeals (BIA)-recognized accredited representatives, and social service providers. These engagements occurred via webinar and in-person, and reached more than 2,110 people in FY 2015. Since USCIS began tracking its external engagements on T and U visas and VAWA in FY 2010, USCIS has held 123 engagements involving approximately 39,000 people.
- In September 2015, the VSC hosted its annual stakeholder event. During this event, there were two sessions dedicated to the T/U/VAWA-related work. Several subject matter experts, as well as senior leadership from VSC, were in attendance to answer questions and provide information to stakeholders from various locations throughout the country.
- In September 2015, USCIS presented a VAWA webinar to the Office of Immigration Litigation (OIL) on the basic eligibility requirements for self-petitioners and VAWA-based adjustment of status.
- In April 2015, USCIS participated in the 13<sup>th</sup> Annual Freedom Network Anti-Trafficking Conference in Washington, DC. This conference brought together service providers, innovative leaders in Government, experienced law enforcement, community organizers, members of the faith-based community, and other experts to

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<sup>41</sup> See CISOMB Recommendation, “Improving the Process for Removal of Conditions on Residence for Spouses and Children” (February 28, 2013), available at <http://www.dhs.gov/publication/improving-process-removal-conditions-residence-spouses-and-children>.

share expertise, develop new strategies, and work in collaboration with partner agencies.

- In March 2015, USCIS participated in a meeting for Rescue & Restore grantees during the Division of Anti-Trafficking, Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement conference. USCIS discussed best practices for completing successful applications, VSC guidelines, and processing of T visa applications.
- USCIS presented during the U visa webinar for OIL in March 2015 on the wait-list process and the expedite criteria, as well as the best way for OIL attorneys to obtain status updates.
- In October 2014, the VSC hosted its annual stakeholder event. During this event, there were two sessions dedicated to the T/U/VAWA-related work. Several subject matter experts, as well as senior leadership from VSC, were in attendance to answer questions and provide information to stakeholders from various locations throughout the country.
- In addition, USCIS continues to support the Ombudsman's engagements related to this topic and participated in a number of meetings with the Ombudsman and advocacy organizations regarding concerns that they have with the T and U visa programs.

#### VAWA, T Visa, and U Visa Policy

In 2015, USCIS published two memoranda on the VAWA 2013 changes to T and U visas and one interim memo for comment on VAWA-based Cuban adjustments:

- *New T Nonimmigrant Derivative Category and T and U Nonimmigrant Adjustment of Status for Applicants from the Commonwealth of the Northern Mariana Islands* on April 15, 2015.<sup>42</sup>
- *Violence Against Women Reauthorization Act of 2013: Changes to U Nonimmigrant Status and Adjustment of Status Provisions* on April 15, 2015.<sup>43</sup>
- *VAWA Amendments to the Cuban Adjustment Act: Continued Eligibility for Abused Spouses and Children* on June 19, 2015.<sup>44</sup>

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<sup>42</sup> See USCIS PM, "New T Nonimmigrant Derivative Category and T and U Nonimmigrant Adjustment of Status for Applicants from the Commonwealth of the Northern Mariana Islands," PM-602-0107, (April 15, 2015), available at <http://www.uscis.gov/sites/default/files/files/nativedocuments/2015-0415-TNonimmigrant-TVPR.pdf>.

<sup>43</sup> See USCIS PM, "Violence Against Women Reauthorization Act of 2013: Changes to U Nonimmigrant Status and Adjustment of Status Provisions," PM-602-0102, (April 15, 2015), available at <http://www.uscis.gov/sites/default/files/files/nativedocuments/2015-0415-TVPR-2013-PM.pdf>.



## Processing Times

USCIS has made significant efforts to achieve and maintain processing time goals despite increases in the number of filings received. As of March 31, 2016, processing times were 22.5 months for U nonimmigrant petitions (or conditional approvals), 7 months for applications for T nonimmigrant status, and 5.3 months for VAWA self-petitions. To ensure timely adjudication of Form I-360 VAWA self-petitions, VSC reallocated and augmented resources and provided additional overtime to the officers adjudicating this workload. To improve the processing times for Form I-914, Application for T nonimmigrant Status, the VSC cross-trained additional officers in early August 2015. These additional resources will assist with improving processing times as well as provide greater flexibility with the workload.

With respect to posted processing times for U nonimmigrant status petitions, USCIS responded to the CISOMB's concern that those processing times reflected the date of the last petition approved under the FY 2014 U-visa cap and did not accurately reflect the processing time for wait-listed U status grants. USCIS revised the website processing times. The times now reflect the date the last petition was conditionally approved (or wait-listed).

In addition, the VSC's T/U/VAWA Humanitarian Division received approximately 21,842 inquiries on Forms I-360, I-914, I-918, and VAWA-based Form I-485 applications from December 2014 to May 2015. The section intakes, vets, and processes its own customer service work due to the confidentiality protections provided for under 8 U.S.C. 1367. Due to this increase in volume of inquiries, VSC has trained additional officers on the customer service workload. The VSC has made significant gains as a result of the customer service initiative and has decreased response times.

## VAWA Employment Authorization for Nonimmigrant Victims

USCIS is creating a new form, Form I-765V, and instructions to be used to apply for employment authorization based on section 106 of the INA. This provision relates to abused spouses of certain nonimmigrants. In the meantime, USCIS is working to finalize the policy memo and address stakeholders' comments provided in response to the interim memo published for comment in December 2012.

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<sup>44</sup> See USCIS Interim Memo for Comment, "VAWA amendments to the Cuban Adjustment Act: Continued Eligibility for Abused Spouses and Children," PM-602-0110, (June 19, 2015), available at [http://www.uscis.gov/sites/default/files/USCIS/Outreach/Feedback%20Opportunities/Interim%20Guidance%20for%20Comment/PED-VAWA\\_CAA-Amendments-PM-602-0110.pdf](http://www.uscis.gov/sites/default/files/USCIS/Outreach/Feedback%20Opportunities/Interim%20Guidance%20for%20Comment/PED-VAWA_CAA-Amendments-PM-602-0110.pdf).

## U and T Visa Law Enforcement Certifications and Declarations

USCIS understands the need to respond to and work collaboratively with the law enforcement community and other certifiers. To that end, USCIS had meetings with DOL to provide guidance and suggestions as DOL launched its T visa declaration policy. USCIS provided DOL with guidance on T visa declarations and U visa certifications.

USCIS worked with the CISOMB to revise the draft DHS U Visa Law Enforcement Certification Resource Guide. USCIS' goal was to create a document responsive to the law enforcement community's questions and concerns.

USCIS continues to hold quarterly engagements with law enforcement officials to present information on the T and U visa programs and law enforcement's role in the *declaration* and certification process. USCIS also provides ongoing training and resources to Federal Government agency partners, including DOL, EEOC, the National Labor Relations Board, and the Department of Justice, and continues to collaborate with these agencies as part of the Interagency Working Group for the Consistent Enforcement of Federal Labor, Employment and Immigration Laws.

In FY 2015, USCIS hosted eight engagements on T and U visas specifically for law enforcement audiences. These were a combination of webinars and in-person presentations. During these sessions, USCIS reviewed the forms of immigration relief available to victims of human trafficking and certain other crimes and discussed the law enforcement certification/declaration in detail. These sessions reached more than 300 law enforcement officers around the country, including local police officers, Federal agents, and prosecuting offices. USCIS has several more web-based and in-person engagements scheduled for FY 2016 and anticipates this will significantly increase our outreach goals.

USCIS also hosts bi-monthly training webinars on T and U visas for community-based organizations and law enforcement agencies. These webinars remain very popular forums for communicating timely and accurate information to the public on T and U visas. USCIS also manages a public email box, [T\\_U\\_VAWAtraining@uscis.dhs.gov](mailto:T_U_VAWAtraining@uscis.dhs.gov), and responds to hundreds of inquiries and requests for training each year.

## Parole for U Conditional Grantees

USCIS is actively exploring parole options for conditional grantees of the U visa program at this time.

## VAWA Adjustment of Status

For several years, USCIS has been working to correct delays in transferring VAWA adjustment of status applications to the National Benefits Center (NBC). As a result of the decrease in delays, the overall adjudication timeline of these applications has decreased.

### Requests for Evidence (RFEs)

USCIS continues to monitor the quality of RFEs for the humanitarian programs. As noted previously, the VSC provides classroom training and ongoing mentorship that promotes officer development and proficiency. During this process, a new officer collaborates with a seasoned officer to develop adjudicative skills, including the ability to write quality RFEs. The mentoring process continues until the trainee is ready to work independently. In addition to the training, roundtable discussions are held routinely with officers on common themes and issues, including RFE best practices. These discussions allow officers to continuously learn and grow in their area of expertise. Supervisors also attend the classroom training and roundtable discussions to build upon their knowledge in order to better guide officers.

VSC also conducts several quality reviews throughout the year. Each month, supervisors review a random selection of cases. While reviewing these cases, the supervisor examines all aspects of the adjudication including the RFE. This enables the supervisor to provide timely feedback to the officer and enhances the quality of the adjudication.

## **D. Fee Waiver Processing Issues**

The 2015 CISOMB Report raises several questions and issues regarding the intake of fee waiver requests at the USCIS Lockbox. USCIS understands that it is extremely important that every fee waiver request is consistently and timely handled. The majority of fee waiver requests are filed at the Lockbox, although a small portion are handled at other USCIS offices. Regarding the specific examples in the report, USCIS always welcomes specific feedback on cases through the CISOMB to help the agency address issues as they are identified.

### Pro se Applicants

Form I-912, *Request for Fee Waiver*, is going through the Paperwork Reduction Act (PRA) revision process. USCIS has published a 60-day notice and a 30-day notice in the Federal Register requesting public comments on the new form and instructions. In addition, USCIS also demonstrated the agency's commitment to engage with stakeholders by hosting a national stakeholder engagement on fee waiver requests on June 17, 2015. Stakeholders were encouraged to share concerns via the public comment process. Both comment periods have closed and USCIS considered all of the public comments received. USCIS is currently coordinating with OMB through their review process. The revised form will be used immediately upon approval by OMB.

### Template Denial Notices

As noted in the 2015 CISOMB Report, as well as in reports from previous years, USCIS has reviewed its fee waiver denial process and language and edited the denial letters and templates that the agency uses to increase clarity by providing more specific information. USCIS also continues to encourage stakeholders to use the lockboxsupport@uscis.dhs.gov mailbox for information beyond what is received in the denial notices.

USCIS' goal is to provide Lockbox support responses within 10 business days. Even though the volume of inquiries has almost doubled over the last 2 fiscal years, USCIS is currently providing responses within 5 business days. USCIS has dedicated extra resources to handle this increased volume and anticipates being able to provide more timely responses in the future.

### Inconsistent Adjudications

The Office of Intake and Document Production (OIDP) continues its quality assurance program to monitor the work being performed and, consistent with prior years, the average quality level has remained over 98 percent through FY 2015. The quality assurance program ensures consistent administration of the fee waiver program. USCIS also welcomes feedback via lockboxsupport@uscis.dhs.gov from stakeholders. The agency continues to work directly with CISOMB on any specific cases or issues that arise.

### Household Size and Income Calculations

The concerns relating to household size and income calculations were raised by multiple commenters on the revised Form I-912 instructions. In response, USCIS has revised the instructions to clarify household income and has reduced the income documentation requirements. The revised form and instructions are currently under review and will be published once the agency receives final approval through the PRA clearance process.

### Fee Waiver Issues Summary

USCIS appreciates that the nature of the fee waiver request process is stressful for applicants because requests are usually filed by those who are concerned with being able to afford an immigration benefit. In most cases, these benefits can have a major impact on an applicant's life. Thus, USCIS takes the concerns of the CISOMB's office about fee waivers very seriously. The agency disagrees that there is a "...large volume of vague and unsubstantiated fee waiver rejections..." as noted in the 2015 Annual Report, and the agency has not received any data to support this claim.

USCIS also disagrees that, "[t]he mechanisms for the public to resolve fee waiver problems remain inadequate to address systemic problems." There are multiple mechanisms in place to address case-specific concerns that arise. USCIS has publicized the Lockbox support mailbox email address, lockboxsupport@uscis.dhs.gov, on the

USCIS website, which can provide case specific feedback. Applicants may also make general fee waiver inquiries with the NCSC or in person by scheduling an InfoPASS appointment at the local field office.

Historically, approximately 7 percent of inquiries received through the Lockbox support mailbox are fee-waiver related. USCIS processed 13,000 inquiries in FY 2013, 19,000 in FY 2014 and over 18,000 through the third quarter of FY 2015. In addition, in FY 2015, USCIS received 15 fee-waiver related inquiries from the CISOMB, and in six of those cases USCIS acknowledged the error and worked to resolve the issue. As previously noted, response times on inquiries sent to lockboxsupport@uscis.dhs.gov slowed during the 1st, 2nd, and 3rd quarters of FY 2015 due to a sharp increase in volume, however, USCIS is currently responding within 5 business days and plans to continue improving the response times with the help of additional staff.

## **E. Humanitarian Reinstatement for Surviving Relatives Under INA Section 204(l) and the Regulations**

In the 2015 Annual Report, the CISOMB raises concerns regarding the handling of requests for humanitarian reinstatement. USCIS automatically revokes approved family-based petitions upon the sponsoring petitioner's death. To preserve the surviving relative's ability to immigrate, the relative may be eligible to request statutory reinstatement under INA 204(l) or humanitarian reinstatement under 8 CFR 205.1(a)(3)(i)(C).

USCIS achieved a number of accomplishments during the reporting period that highlight its commitment to addressing the CISOMB's concerns regarding variances and delays in handling reinstatement requests, template denials, confusion between the types of reinstatement, and applicants' difficulty understanding and seeking reinstatement. Specifically, USCIS held public engagement events with stakeholders, including an Open House at one of its service centers, to discuss, answer questions, and provide information regarding reinstatement requests. USCIS also held national roundtable meetings with the Office of Chief Counsel (OCC) and service center staff to discuss case examples, thereby providing consistent legal advice and guidance to ensure uniformity in the handling of reinstatement requests. Appreciating that this is a complex and potentially confusing adjudication, SCOPS continues to revise and adapt training materials and to provide training, as needed, to ensure consistent adjudication and prevent confusion between reinstatement under INA 204(l) versus the regulations. Also, SCOPS created standardized adjudications procedures, instructional guidance, and correspondence templates.

### Lack of a USCIS Form, Standardized Procedures, and Consistent Instructions

In the 2014 and 2015 Annual Reports, the CISOMB notes that there is no USCIS form to request reinstatement under either INA 204(l) or 8 CFR 205.1(a)(3)(i)(C). The CISOMB raised concerns with the existing process to request reinstatement, which involves the applicant submitting a written request to USCIS.

In the 2015 Annual Report, the CISOMB asserts that USCIS lacks standardized procedures for receiving and adjudicating reinstatement requests and lacks consistent instructions. When an office receives a reinstatement request, it follows established procedures to record the request and take action to process it accordingly. As part of the agency's initiative to streamline and standardize correspondence, including RFEs and decision notices, USCIS has developed the ECHO system. The ECHO system provides standardized correspondence for reinstatement requests regardless of which office adjudicates the request. USCIS believes that these efforts will ensure that offices respond to reinstatement requests in a uniform and timely manner without sacrificing the quality of the adjudication which requires that each case be considered on its own merits.

Additionally, USCIS provides standard instructions on its website on how to make a request for humanitarian reinstatement.<sup>45</sup> The agency's website includes information about reinstatement requests and how and where to submit such requests.<sup>46</sup> USCIS notes that this information includes a chart indicating how and to which office requests should be submitted, which may assuage the CISOMB's concern with the public's difficulty in ascertaining which office has jurisdiction. USCIS will review the guidance that is available on the agency's website to determine if additional clarity is needed or if the guidance should be moved to an area that is more convenient for the public, particularly *pro se* applicants, to locate on the website. USCIS is also exploring options to issue receipt notices.

The 2015 Annual Report also indicates concern that USCIS does not post processing times and notes delays in handling reinstatement requests. While USCIS strives to adjudicate promptly all requests in a "first in, first out" manner, it acknowledges delays may occur due to extenuating factors such as file location or the need to review additional information. Applicants may submit service requests via the NCSC for status updates on pending reinstatement requests.

## **F. In-Country Refugee/Parole Program for Central American Minors**

On December 1, 2014, DOS and DHS announced an in-country refugee and parole program for unmarried children under the age of 21 in El Salvador, Guatemala, and Honduras. The Central American Minors (CAM) Refugee/Parole Program<sup>47</sup> allows certain nationals of these three countries who are lawfully present in the United States to

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<sup>45</sup> USCIS official website, "Humanitarian Reinstatement," available at <http://www.uscis.gov/green-card/green-card-through-family/humanitarian-reinstatement> and "Basic Eligibility for Section 204(I) Relief for Surviving Relatives," available at <http://www.uscis.gov/green-card/green-card-through-family/basic-eligibility-section-204i-relief-surviving-relatives> (last visited August 21, 2015).

<sup>46</sup> *Id.*

<sup>47</sup> USCIS' official website, In-Country Refugee/Parole Processing for Minors in Honduras, El Salvador and Guatemala (Central American Minors – CAM), <http://www.uscis.gov/humanitarian/refugees-asylum/refugees/country-refugeeparole-processing-minors-honduras-el-salvador-and-guatemala-central-american-minors-cam> (last visited August 21, 2015). *Same question as above.*

request that their children be granted interviews for possible resettlement in the United States as refugees, and for consideration of parole if they are not eligible for refugee status.

This past year, USCIS hosted national public engagements on CAM with DOS in English and Spanish. The engagements provided an overview of the CAM eligibility requirements, application process, DNA testing, refugee process, and parole procedures for the program. Participants were provided the opportunity to ask questions during the engagements. In April 2015, USCIS partnered with DOS to host in-person engagements in Dallas and Houston, Texas. Both the USCIS and DOS websites have detailed information on the CAM program.

CAM provides certain qualified children in El Salvador, Guatemala, and Honduras a safe, legal, and orderly alternative to the dangerous journey that some children are currently undertaking to the United States.

As of March 14, 2016:

- The State Department's Refugee Processing Center reports that Affidavits of Relationship had been accepted from parents lawfully present in the United States for 7,001 cases (7,434 individuals).
- USCIS has completed trips to Central America in which there have been 608 interviews (representing 636 individuals) and has conditionally approved 187 cases (representing 205 individuals), or approximately 30 percent, for refugee resettlement; 410 cases (representing 419 individuals), or about 67 percent, were recommended for parole.
- There have been 32 refugee and 53 parolee arrivals to the United States. USCIS will continue to monitor progress in the implementation of this new program in 2016.
- On January 13, 2016, the Administration announced plans to expand access to resettlement in the United States for vulnerable individuals from Central America in partnership with the United Nations High Commissioner for Refugees. This work will build and expand on the CAM Program already operating in the region and would be separate from the CAM Program.

## **VI. Interagency, Customer Service, and Process Integrity**

### **A. Customer Service: CISOMB Case Assistance**

USCIS acknowledges the Ombudsman's recognition of the dedication and expertise of numerous officers at various field offices, service centers, asylum offices, Lockbox

receipting facilities, and other facilities who work directly with the CISOMB to resolve the complicated, sensitive, and at times precedent-setting inquiries submitted by applicants and petitioners.

In addition, the Customer Service and Public Engagement Directorate (CSPED) continuously enhances its processes and resources related to complex and novel case inquiries referred by the CISOMB. The Liaison and Coordination Unit (LCU), which serves as the primary agency liaison to CISOMB, was recently reorganized to the Customer Assistance Office, creating synergy by combining their unique strengths and expertise as the Customer Assistance and Liaison Office (CALO). In addition, a dedicated Special Cases Unit was recently created within CALO, staffed with senior and experienced case resolution officers dedicated solely to resolving the most difficult cases referred by CISOMB.

The LCU has also made significant progress in reducing the number of extended review cases, those that have been pending for at least 6 months outside normal processing time. In coordination with FOD, SCOPS, and Refugee, Asylum and International Operations, these case inquiries have been reduced from over 1,000 pending inquiries reported on the June 2014 report to 439 pending cases reported during the last March 2015 reporting period. This significant reduction in case inquiries is the result of a successful collaboration between the LCU and the various USCIS components.

Finally, to demonstrate the agency's continued commitment to assist CISOMB in its mission, USCIS worked with CISOMB on revising the current Memorandum of Understanding (MOU) to more fully address a number of logistical procedures such as increased access to information systems access, review and response timeframes, access to alien files (A-files), case assistance escalation, and site visits to USCIS offices. The MOU was approved on March 7, 2016.

USCIS looks forward to working together with CISOMB on issues of mutual concern and in serving the public through service, engagement, and innovation.

## **B. Ensuring Delivery of Notices and Documents Updating Addresses**

USCIS recognizes the importance of ensuring proper delivery of notices and secure documents to customers. A key element is making certain that USCIS has a current and properly formatted address. To that end, USCIS is focused on improving awareness and agency tools for address changes, by providing information on how to contact the U.S. Postal Service (USPS) as soon as possible if a secure document is not received, updating mailing addresses with both USPS and USCIS, and using Change of Address Online or ELIS, the USCIS Electronic Immigration System, to update addresses.

The current version of Change of Address Online was significantly updated to provide clearer instructions, easier to follow navigation, and elimination of the need, in most



cases, to file a separate Form AR-11.<sup>48</sup> The next enhancement to Change of Address Online will be address validation through USPS. This enhancement will ensure that addresses are entered in the proper format. Later phases will build a “change of address” service within USCIS that will completely automate the process so that address updates are transmitted to the relevant system where an application or petition is being processed.

The agency is also working on an enhancement that will allow for USCIS ELIS to automatically update Change of Address Online for all immigrants who pay the USCIS Immigrant Fee in USCIS ELIS and all applicants who file Form I-90 at the Lockbox or directly by e-filing in USCIS ELIS. This will ensure that USCIS has the most recent address for the mailing of secure documents, which should reduce the number of documents returned as undeliverable. Additionally, USCIS continues to explore other means of delivery for secure documents such as permanent resident cards (PRC) and EADs. USCIS has engaged in discussions with USPS and will keep the CISOMB apprised of efforts in this area.

When an AR-11 request is received at a field office, USCIS updates the appropriate system(s) and the Form AR-11 is sent to the file. When an applicant submits a service request, either online or through the NCSC, the address changes are not changed in the Service Request Management Tool (SRMT) system. The SRMT merely routes the change of address request to the appropriate office, which updates the relevant system. For address changes requested through SRMT, which can be completed by calling the NCSC or submitting a service request online, the system of record is updated directly and a copy of the SRMT is forwarded to the file.

USCIS’ 2005 memorandum, *Guidance on Evaluating a Request for the Rescheduling of an Interview and Handling the Failure of an Applicant, a Petitioner, a Sponsor, a Beneficiary, or other Individual to Appear for a Scheduled Interview*,<sup>49</sup> also addresses the issue of updating addresses. USCIS added Section B to Chapter 15.1(d)(1)(B) of the AFM, “An Alien’s Failure to Appear for a Scheduled Interview,” which addresses procedures for confirming if an applicant has submitted a change of address if the applicant is scheduled for an interview:

(B) Notification of Change of Address. The adjudicator must confirm whether the individual required to appear for an interview has submitted notification of a change of address. The adjudicator is required to:

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<sup>48</sup> Per INA§ 265, most non-U.S. citizens are required to report a change of address within 10 days of moving (regardless of whether they have an application or petition pending). Form AR-11 has been used to satisfy this requirement.

<sup>49</sup> See USCIS Interoffice Memorandum, “Guidance on Evaluating a Request for the Rescheduling of an Interview and Handling the Failure of an Applicant, a Petitioner, a Sponsor, a Beneficiary, or other Individual to Appear for a Scheduled Interview” (AFM Update AD06-01), (November 23, 2005), available at [http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static\\_Files\\_Memoranda/Archives%201998-2008/2005/noshowintrvw112305.pdf](http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/Archives%201998-2008/2005/noshowintrvw112305.pdf).

- (1) Check local pertinent electronic systems, such as CLAIMS, and pertinent physical records, particularly the file of the application or petition under consideration and any AR-11 (Change of Address) notices, to verify whether any change of address notification was received before or after the interview notice was sent.
- (2) Query the USCIS National Systems AR-11 (Change of Address) database by name and date of birth, A-number, and/or I-94 admission number, if necessary, to confirm whether any changes of address have occurred after the interview notice was generated and mailed.
- (3) Contact the NBC by email at [NBC-Failure-to-Appear-Review@uscis.dhs.gov](mailto:NBC-Failure-to-Appear-Review@uscis.dhs.gov), if necessary, to determine if the Service received a change of address notification.
- (4) Reschedule the interview and mail a new interview notice to the new address if a change of address notification is confirmed.

The 2015 Annual Report's background information on the Secure Mail Initiative (SMI) quotes a 2011 memorandum announcing USCIS' full implementation of SMI completed on May 2, 2011. The report further states that individuals may contact the NCSC to obtain a tracking number and monitor delivery status via USPS' website. Individuals no longer need to call the NCSC to obtain their tracking number. Once an application is approved and the card is mailed, customers can obtain the tracking number directly by accessing Case Status Online (<https://egov.uscis.gov/casestatus/landing.do>). The customer can therefore track this mail, and the only time it is necessary to contact the NCSC for a tracking number or detailed delivery scan data is if the individual has waited 60 days beyond the mailing date or if the applicant does not have internet access. USCIS will make appropriate edits to the agency's website to clarify the way to obtain a tracking number. As correctly noted in the CISOMB report, USCIS is in discussions with USPS on address validation and improving delivery services.

The Pre-Paid Mailing Labels background information provided in the 2015 Annual Report is not accurate. USCIS has been accepting pre-paid mailers for Refugee Travel Documents and Re-Entry Permit Travel Documents since October 2003, as opposed to October 2014, as noted in the report. This is currently possible because the adjudication of the application and the creation of the travel document are both completed at the NSC. The paper application and the mailer are both housed in a physical file that moves through the process as the application is adjudicated, and the document is produced and then packaged for mailing.

In FY 2017, USCIS will transfer the travel document production operation from the NSC to the Corbin and Lee's Summit Production Facilities. Consolidating the production into two facilities instead of three alleviates the need to maintain a contractor team at the NSC and provides much needed space for staff at the NSC. The adjudication of the physical paper application and the document production will no longer be co-located in the same

facility. Under the new process, the production of the travel documents will be generated electronically through the retrieval of data from USCIS systems. Specific document creation will be dictated as the case becomes available in the queue. Since the physical file will not be available at the production facility, USCIS anticipates that the use of pre-paid mailers for Refugee Travel Documents and Re-Entry Permits will no longer be required.

In addition, CISOMB encourages USCIS to expand delivery service using pre-paid mailing labels provided by customers to deliver PRCs and EADs. The adjudication of the applications filed that trigger production of a PRC and EAD is similar to the travel document flow outlined above. The adjudication and card production process do not take place in the same facility; therefore, the prepaid mailer will not be available at the time the card is produced and ready for shipment.

Additional constraints to using the prepaid mailers are:

- PRCs and EADs are produced at the Corbin Production Facility and Lee's Summit Production Facility. Once a card is approved for production, the card order is placed in a 48-hour hold queue to allow time for the adjudicator to correct any errors. Once this hold period is over, the card is produced the following business day and picked up by USPS for delivery. Since the document production time is quick, it would be inefficient to hold a produced card pending receipt of a pre-paid mailer from the adjudicating site at one of the production facilities, after determining which production facility actually produced the card. The production facilities are not equipped to hold, store, secure, and track specific cards.
- The configuration of the production line does not allow for prepaid mailers. After the card is produced, it electronically moves through quality assurance checks before going into the automated mail inserter machine. As a card goes through this machine, its data is read, the associated address is placed on the mailer, and the card is placed in the USPS Priority Mail envelope. Any card that would need to be pulled from the production flow would require manual intervention.
- A larger percentage of applications are now being filed electronically. It is not feasible to use a hardcopy, pre-paid mailer with electronic filings.

For clarification, the 2015 Annual Report states “[according] to USCIS policy, if the USPS does not return a document or notice to USCIS, and there has been no change of address submitted, USCIS will consider the notice or document as properly delivered, and the applicant must re-file and again pay the filing fee in order to obtain a replacement document or continue immigration processing.” USCIS does not require that a document (e.g., green card or EAD) be returned as undeliverable in order for a replacement document to be produced without fee. For example, if the USPS delivery tracking results indicate that the last event was “Out for Delivery” (without a final scan event of “Delivered”), then this has often been sufficient evidence to support the customer’s claim that the document was not received. USPS will often provide additional documentation

to the customer supporting the lost document claim when the customer follows up with their local postal facility directly. Each request for a replacement document is reviewed to determine whether a fee is required in each situation.

CISOMB also encourages USCIS to consider the use of USPS delivery with signature confirmation. CSPED is leading a working group on SMI issues with operational USCIS components. The working group is exploring the various options, which will be presented to USCIS senior leadership for review and concurrence before implementation.

USCIS has formed internal working groups and met with USPS to discuss undelivered mail and develop recommendations.

The CISOMB summary focuses on address changes as a primary cause of undelivered cards, when in fact, there are many more reasons for non-delivery. Contributing factors may include actions taken by the applicant such as moving, failure to update address with USPS, or failure to notify USCIS of new address. USPS factors include mailbox theft, courier error in route to residence, misrouted mail, mail delivered to incorrect receptacles, mail lost in transit to distribution facilities, and mail received by co-located siblings/friends/immigrants. USCIS factors include card production occurring before the applicant's new address change is updated in the relevant USCIS source systems.

### **C. Issues with USCIS Intake of Form G-28, *Notice of Entry of Appearance as Attorney or Accredited Representative***

CISOMB also identified issues related to the lack of notification when a Form G-28 is not accepted. Most notably, the report indicated that the current practice complicates the customer service process. An attorney who has not received a receipt notice may reach out to the NCSC for information. However, if the Form G-28 has not been accepted, the Immigration Services Officer at the NCSC is unable to provide information as to whether the case has been received or why the Form G-28 was not accepted. The attorney may also contact the OIDP Lockbox Support mailbox for assistance for those applications filed through OIDP but would encounter the same difficulty in getting information.

When an attorney or accredited representative submits a Form G-28 that is unsigned, USCIS treats the Form G-28 as deficient, and consistent with 8 CFR 103.2(a)(3), treats the application, petition, or request as if it were submitted without a Form G-28. Also, if USCIS finds that a Form G-28 is not recognized, USCIS generally does not notify the attorney or accredited representative (legal representative) or the applicant, petitioner, or requestor (the client). The legal representative usually only becomes aware that the Form G-28 was not accepted when he or she fails to receive USCIS notices or is unable to communicate with USCIS because a valid Form G-28 is not on file.

The most common reasons for not recognizing a Form G-28 are:

- The client and/or the legal representative did not sign the form;

- The legal representative did not submit the latest edition of the form;
- The legal representative did not include his or her business address on the form; or
- The form is not associated with at least one application, petition, or request within the package.

Although USCIS cannot recognize an improperly filed Form G-28, USCIS accepts the underlying application, petition, or request if it is properly filed and meets the acceptance criteria. In these instances, USCIS communicates with the client. The legal representative is not recognized by USCIS, because the Form G-28 submitted was not properly filed. Therefore, the legal representative does not have the right to access any case-specific identifying information, which is protected under privacy rules.

USCIS is working to develop a means of notifying the petitioner or applicant that the Form G-28 submitted on his or her behalf was not recognized.

As noted in the report, USCIS also published a revised Form G-28 earlier this year and updated USCIS filing tips. In addition, USCIS introduced a new website devoted to the Form G-28 that provides guidance on how to file a subsequent Form G-28 and how to withdraw representation. The agency will continue to add information to this website to ensure that both the client and the legal representative have clear and consistent information regarding the form.

## **D. Calculating Processing Times**

Addressing the issues that stakeholders have with processing time accuracy and the timeliness of posting requires a multi-prong approach by USCIS. Posting processing times in a timely fashion is an immediate priority that USCIS is pursuing by building a better tool to support the program. USCIS is targeting FY 2016 to implement a new processing time tool for internal use and a better interface for the customer. As far as improved accuracy in the processing times, USCIS is working towards developing statistically based methods for calculating processing times. This method would account for the deviations caused by RFEs, NOIDs, background and security checks, and other activities not currently included in USCIS calculations. The intended outcome is to provide customers with a range for the processing time of their forms rather than an exact date or definitive month, as there are multiple events that may cause case processing to be longer than average.

## **E. Transformation: Modernizing USCIS Systems, Case Processing, and Customer Service**

In 2015, USCIS' OTC focused on deploying Form I-90, *Application to Replace Permanent Resident Card*, as the first release in the new system architecture, which included integration with the USCIS Lockbox to support paper filing and incorporation of

the new Form G-28. As of April 2015, Form I-90 workload is processed 100 percent electronically in USCIS ELIS.

OTC is also focusing on simplifying and streamlining the processing of payments of the USCIS Immigrant Fee in the new architecture. The new simplified immigrant fee payment process will allow customers to pay the \$165 fee without having to create a USCIS online account. Any individual, including attorneys, accredited representatives, relatives, friends, and employers will be able to pay the immigrant fee on behalf of a new immigrant, using the immigrant's A-number and DOS Case ID. This will also improve data integrity by matching the A-number and DOS Case ID to the immigrant's existing visa record before proceeding to payment, thus ensuring the immigrant is entering accurate information. The process will further streamline the process by giving USCIS the ability to use pictures and fingerprints taken by DOS to produce the new immigrant's green card, thereby eliminating some processing steps at U.S. ports of entry.

Starting June 15, 2015, USCIS no longer accepts electronically filed Forms I-539, *Application to Extend/Change Nonimmigrant Status*, and I-526, *Immigrant Petition by Alien Entrepreneur*. Additionally, USCIS has discontinued the EB-5 Regional Center Document Library. The original plan was to decommission Legacy USCIS ELIS after the agency rebuilt and incorporated Form I-539, Form I-526, the Document Library, and the USCIS Immigrant Fee functionality into the enhanced architecture. However, due to re-prioritization of work in order for USCIS to meet the objectives stated in the President's Executive Actions announced November 21, 2014, as well as the decision by the USCIS Executive Steering Committee (ESC) to prioritize development of the Form N-400, *Application for Naturalization*, the inclusion of Form I-539, Form I-526, and the EB-5 Regional Center Document Library in the new architecture of USCIS ELIS will not occur until FY 2016 and FY 2017 respectively.

The decision to no longer accept electronically filed Forms I-539 is based on several factors. Recently, USCIS updated the paper Form I-539 and published a new version of the Form G-28, which now includes new sections to capture an applicant's preferences for mailing of notices and secure documents. Legacy USCIS ELIS would need to be modified to accommodate the new versions of both forms. To modify Legacy USCIS ELIS to accommodate the new Form G-28 would require a major investment of resources and time due to the interconnection of the 29 commercial off-the-shelf software products used in processing workload in Legacy USCIS ELIS. Furthermore, there were operational concerns about the extra time it takes to adjudicate an electronically-filed Form I-539 versus a paper-filed form. The low usage rate of the Form I-539 being filed electronically and the feedback from internal users, including comments expressed in the CISOMB report, were also factors in USCIS' decision. The extremely low usage rate of the Form I-526 was the major factor in the decision to stop the electronic filing of that form.

Those customers who completed filing a Form I-539 or Form I-526 before July 15, 2015, are still able to access their accounts, while USCIS processes their cases, to check their case status, change their address, and respond to RFEs. In the case of electronic-filed

Forms I-526, customers can review and attest to existing “deal packages”—a set of documents relevant to one specific regional center project for use by the petitioner—which are created by their Document Library Manager.

The USCIS Transformation initiative has overcome many of the problems it faced during the first 4 years. The report states Transformation was slated for completion in 2013, a date that came from the 2007 Government Accountability Office (GAO) Report on USCIS Transformation.<sup>50</sup> This GAO report was issued before the contract for the Solutions Architect was awarded in November 2008. However, the first approved baseline of the program was completed in 2014.

Based on OMB, DHS, and USCIS recommendations from March 2012, USCIS started assessing the move to a simplified architecture. The assessment reviewed the initial architecture, considered various strategies for simplification and, in September 2012, awarded the Transformation Architecture Pilot to validate and design objectives for a new architecture. The USCIS ESC approved the move to the new architecture on March 18, 2013. The change was to an open-source code framework from 29 proprietary, commercial, off-the-shelf products. The new architecture is using best practices, agile development and design patterns, and generalized capabilities where possible, and removes products that duplicate other USCIS products.

The new architecture allows for development and production using cloud services. The original system’s architecture was not compatible with many of these technological advances and development in the original system relied on complex, proprietary software that made it difficult to efficiently and effectively customize for agency needs. With the new architecture, USCIS’ Transformation program was the first within DHS to move to a public cloud service, which was approved by the DHS Chief Information Officer.

In April 2012, both contractors and USCIS staff changed from the waterfall methodology to an agile methodology. The agile methodology allows for flexibility and responsiveness to the changing priorities and dynamics in the development process, offering more frequent value-added releases to USCIS ELIS. Incremental pieces of functionality will be developed in 4- to 6-month cycles. This change in methodology allowed Transformation to comply with the 25-point plan to reform Federal information technology (IT) by deploying functionality in release cycles no longer than 12 months, and ideally less than 6 months as outlined in a best practice reported in GAO 14-361 Report: *Information Technology-Agencies Need to Establish and Implement Incremental Development Policies*.<sup>51</sup>

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<sup>50</sup> See GAO Report, USCIS Transformation: Improvements to Performance, Human Capital, and Information Technology Management Needed as Modernization Proceeds, GAO-07-1013R, (July 17, 2007), available at <http://www.gao.gov/products/GAO-07-1013R>.

<sup>51</sup> See GAO Report, Information Technology: Agencies Need to Establish and Implement Incremental Development Policies, GAO-14-361, (May 1, 2014), available at <http://www.gao.gov/products/GAO-14-361>.

The CISOMB report cites changes in the program's life cycle cost estimate (LCCE) increasing from \$2.1 billion to \$2.6 billion from July 2011 to September 2014 and from approximately \$2.6 billion to approximately \$2.9 – \$3.1 billion in April 2015. The initial LCCE was based on a period of performance of 2006 – 2022. The April 2015 LCCE covers the period of performance from 2006 – 2033, 4 additional years of development, 11 additional years for the sustainment period, the change in acquisition strategy, as well as a correction from the prior estimate.

#### USCIS ELIS Internal and External Customer Service

USCIS ELIS customer service is not just a responsibility of USCIS' Office of OTC but is a strong partnership with CSPED. From establishing the Customer Contact Center (CCC) for USCIS ELIS assistance in October 2013, to receiving weekly updates from the CCC on the top five issues, OTC and CSPED work together to gather feedback and improve the experience with USCIS ELIS. Additionally, external customers are surveyed on a monthly basis regarding their USCIS ELIS experience. For the Forms I-539 and the Immigrant Fee payment process in legacy USCIS ELIS, customer satisfaction rates started at 82 percent and 72 percent, and most recently have been around 91 percent and 88 percent, respectively. For the Form I-90 that was released in the new architecture, the customer satisfaction rate has been at 93 percent for the last 2 months. These results meet or exceed the established customer satisfaction goals for FY 2015 of 85 percent and above the 66.1 percent of the 2013 citizen satisfaction with the Federal Government published by the American Consumers Survey Index.

For the first form to be deployed in the new architecture, OTC wanted to ensure that the agency captured feedback on the system and identified any issues before it was fully deployed. A 72-hour limited introduction of the Form I-90 was conducted in November 2014. OTC sent a team on-site to get feedback from those working the process and made improvements prior to the full launch in March 2015. An operational assessment was conducted for the 72-hour limited introduction. An internal survey of the adjudicators scored 100 percent agreement that USCIS ELIS is effective and timely in searching case information, and the majority of the adjudicators agreed that USCIS ELIS updates account information successfully and quickly, sharing electronic content and notifications is better with USCIS ELIS than with the paper processes, and the USCIS ELIS user interface is understandable and easy to navigate.

#### USCIS ELIS Oversight

The 2015 Annual Report referenced the GAO report, "High-Risk Series: An Update," in regard to the Transformation Program, stating that the GAO designated the Transformation program "high-risk." See GAO-15-290 (February 11, 2015). The reference to the Transformation Program being "high risk" is misquoted in that the GAO high risk area is the general management of IT Acquisitions and Operations. The GAO report summarizes nine critical factors that underlie successful major acquisitions that support the objective of improving the management of large-scale IT acquisitions within the Federal Government. None of the nine factors was applied to the USCIS



Transformation Program when it was placed on a list of ongoing investments with “significant issues requiring attention.”

Furthermore, the information in the GAO report was inaccurate, appearing to be the result of auditor interpretation of material provided. The GAO report states that key requirements were approved in 2011 but were revised in 2013 due to risks with the program’s approach. The requirements for the USCIS Transformation Program have not changed, although the agency’s technical approach to achieving the requirements has been adjusted to reduce risk. The GAO report further states USCIS has not yet demonstrated the extent to which it can meet six key requirements. The agency had provided the GAO with information in meeting key performance parameters for five of the six measures. The performance measure for the sixth parameter addresses scalability of the system, which will be demonstrated as more workload is added incrementally. The GAO report goes on to state the program’s LCCE increased from approximately \$2.1 billion to approximately \$2.6 billion. There was no context provided on the period covered by the two separate cost estimates. The first estimated covered the period 2006-2022 and the second estimate covered 2006-2032.

USCIS and OTC will continue to work with the GAO team that is currently reviewing the program to ensure that GAO receives the most accurate and current information available. Should the conclusion at the end of GAO’s review be that the program has “significant issues requiring attention,” USCIS would hope this is based on facts and data.

## **F. Known Employer Pilot Program**

On March 3, 2016, USCIS launched the Known Employer pilot program, which allows an employer to request that USCIS predetermine certain requirements of select immigrant and nonimmigrant visa classifications that relate to the employer itself. These requirements generally relate to the employer’s corporate structure, operations, and financial health.

If USCIS approves the employer’s predetermination request, the employer may then file petitions or applications for individual employees without resubmitting evidence with respect to any requirements for individual petitions or applications. USCIS will defer to the approved predetermination except when it finds that there was a material error or a substantial change in circumstances, or that there is new material information that adversely affects the validity of the predetermination.

The following employers have confirmed their participation in the pilot program:

- Citigroup, Inc.
- Ernst & Young LLP
- Kiewit Corporation
- Schaeffler Group USA Inc.
- Siemens Corporation

## VII. Recommendations Update

USCIS welcomes the opportunity to provide the following update on the CISOMB's formal recommendation on Notices to Appear (NTA).

Listed below are the specific recommendations and the current status for each issue:

- 1) Provide additional guidance for NTA issuance with input from U.S. Immigrations and Customs Enforcement (ICE) and the Executive Office for Immigration Review (EOIR)

On November 20, 2014, DHS published Policy Directive 044-04, *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants*.<sup>52</sup> USCIS immediately undertook a new review of PM 602-0050, *Revised Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens*,<sup>53</sup> with the goal of indicating how USCIS NTA policies intersect with the removal priorities identified in Policy Directive 004-04. USCIS participated in discussions with DHS components, including ICE and CBP, as DHS was drafting guidelines on the implementation of Policy Directive 044-04. On June 12, 2015, DHS issued Instruction Number 044-01-001, *Implementing DHS Immigration Enforcement Priorities*.<sup>54</sup> USCIS is currently finalizing a draft of the proposed new memorandum on NTA issuance.

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<sup>52</sup> See DHS Memorandum, "Policies for the Apprehension, Detention and Removal of Undocumented Immigrants," (November 20, 2014), available at [http://www.dhs.gov/sites/default/files/publications/14\\_1120\\_memo\\_prosecutorial\\_discretion.pdf](http://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf).

<sup>53</sup> See USCIS PM, "Revised Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens," PM-602-0050, (November 7, 2011), available at [http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static\\_Files\\_Memoranda/NTA%20PM%20%28Approved%20as%20final%2011-7-11%29.pdf](http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/NTA%20PM%20%28Approved%20as%20final%2011-7-11%29.pdf).

<sup>54</sup> ICE official website, Priority Enforcement Program, <https://www.ice.gov/pep>, (last visited August 21, 2015).

2) Require USCIS Attorneys to Review NTAs Prior to Their Issuance and Provide Comprehensive Legal Training

OCC and the USCIS Academy began work on a new NTA training module in the 2nd quarter of FY 2015. The training is composed of seven lessons covering the following topics: *Types of Proceedings to Remove or Bar an Alien from the United States; When it is Appropriate to Issue an NTA; The Major Elements of Form I-862, NTA; Analyzing an Alien's Immigration History; Writing NTA Allegations and Charges; Service of Process; and the Removal Process.* Embedded in these lessons are knowledge checks based on hypothetical scenarios.

The training has been completed and will be deployed for the USCIS Academy Journeyman Training Course during the week of April 25, 2016, with instruction provided by OCC.

3) Create a working group with representation from ICE and EOIR to improve tracking, information sharing, and coordination of NTA issuance

USCIS continues to work with ICE and EOIR in coordinating issues involving NTAs.

## VIII. Conclusion

USCIS has risen to the challenges associated with the implementation of many new programs this past year. Simultaneously, many of the agency's current programs have experienced a significant increase in applications, petitions, and requests. The Potomac Service Center will be fully operational in the coming months to further increase USCIS' production capabilities. New policies, processes, and technologies have been put into place to help ensure that USCIS will maintain both the integrity of the legal immigration system and an exceptional level of customer service. The Nation's latest generation of immigrants and newest citizens deserve nothing less than the best in public service.

Most importantly, the dedicated employees of USCIS are ready to further implement immigration reforms during this critical time. Through USCIS' Quality Workplace Initiative, the employees and management are partnering together to identify significant improvements in the way the agency conducts business with both external and internal stakeholders.

The 2015 Annual Report provides another opportunity for USCIS to take stock of the agency's progress and identify further refinements to USCIS' current operations. USCIS very much appreciates CISOMB's comprehensive and thoughtful evaluation and looks forward to working with CISOMB in the new year.

## IX. Appendix A: Acronyms and Abbreviations

AAO	Administrative Appeals Office
AFM	Adjudicator's Field Manual
BIA	Board of Immigration Appeals
CALO	Case Assistance and Liaison Office
CAM	Central American Minors Program
CBP	U.S. Customs and Border Protection
CCC	Customer Contact Center
CFR	Code of Federal Regulations
CISOMB	Citizenship and Immigration Services Ombudsman
CRU	Case Resolution Unit
CSC	California Service Center
CSPED	Customer Service and Public Engagement Directorate
DACA	Deferred Action for Childhood Arrivals
DHS	Department of Homeland Security
DOD	Department of Defense
DOL	Department of Labor
DOS	Department of State
EAD	Employment Authorization Document
ECHO	Enterprise Correspondence Handling Online
ELIS	Electronic Immigration System
EOIR	Executive Office for Immigration Review
ESC	Executive Steering Committee
FAQ	Frequently Asked Questions
FOD	Field Operations Directorate
FY	Fiscal Year
GAO	Government Accountability Office
HFRP	Haitian Family Reunification Parole Program
HHS	Department of Health and Human Services
ICE	U.S. Immigration and Customs Enforcement
INA	Immigration and Nationality Act
IPO	Immigrant Investor Program Office
IT	Information Technology
LCCE	Life Cycle Cost Estimate
LCU	Liaison and Coordination Unit
LPR	Lawful Permanent Resident
MOU	Memorandum of Understanding
NBC	National Benefits Center
NCSC	National Customer Service Center
NSC	Nebraska Service Center
NOID	Notice of Intent to Deny
NPRM	Notice of Proposed Rulemaking
NTA	Notice to Appear
OCC	Office of Chief Counsel
OIDP	Office of Intake and Document Production

OIL	Office of Immigration Litigation
OMB	Office of Management and Budget
OOH	Occupational Outlook Handbook
OTC	Office of Transformation Coordination
PM	Policy Memorandum
PRA	Paperwork Reduction Act
PRC	Permanent Resident Cards
RFE	Request for Evidence
SAVE	Systematic Alien Verification for Entitlements
SCOPS	Service Center Operations Directorate
SCU	Special Cases Unit
SIJ	Special Immigrant Juvenile
SMI	Secure Mail Initiative
SOP	Standard Operating Procedures
SRMT	Service Request Management Tool
TLC	Temporary Labor Certification
TSC	Texas Service Center
TVPRA 2008	Trafficking Victims Protection Reauthorization Act of 2008
UAC	Unaccompanied Alien Children
USC	U.S. Code
USCIS	U.S. Citizen and Immigration Services
USCIS ELIS	USCIS Electronic Immigration System
USPS	U.S. Postal Service
VAWA	Violence Against Women Act
VIS	Verification Information Systems
VSC	Vermont Service Center