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*BEFORE THE*

**COMMITTEE ON THE JUDICIARY**  
**U.S. HOUSE OF REPRESENTATIVES**

*CONCERNING*

**“SAFEGUARDING THE INTEGRITY OF THE IMMIGRATION  
BENEFITS ADJUDICATION PROCESS”**

**February 15, 2012**



Good morning, Chairman Gallegly, Ranking Member Lofgren, and Members of the Committee. I am Charles K. Edwards, Acting Inspector General for the Department of Homeland Security (DHS). Thank you for inviting me here today to discuss our January 2012 report, *The Effects of USCIS Adjudication Procedures and Policies on Fraud Detection by Immigration Services Officers*.

As you know, the DHS Office of Inspector General (OIG) was established in January 2003 by the *Homeland Security Act of 2002*, which amended the *Inspector General Act of 1978*. The DHS OIG seeks to promote economy, efficiency, and effectiveness in DHS programs and operations and reports directly to both the DHS Secretary and the Congress. We fulfill our mission primarily by issuing audit, inspection, and investigative reports that include recommendations for corrective action.

My testimony will focus on our report, which recommended changes to improve fraud detection in the immigration benefit caseload. This inspection effort was designed to respond to questions from Senator Grassley after he received whistleblower complaints from USCIS service center employees. Our conclusions are based on interviews and survey responses, as well as the review of hundreds of e-mail messages, reports, appeals decisions, and media stories. We received input from more than 400 United States Citizenship and Immigration Services (USCIS) employees, including Director Mayorkas. We thank all of them for their perspectives and collaboration.

USCIS determines the eligibility of individuals who seek immigration and citizenship benefits. Each year, USCIS processes more than 6 million applications or petitions, including requests for U.S. citizenship, lawful permanent residence, employment authorization, humanitarian relief, and other benefits.

In our report, we determined that important steps have been taken to promote the integrity of the immigration benefit system. Nonetheless, additional work and continued vigilance is necessary to maximize efficiency and mission performance. Our report included 11 recommendations for USCIS and a discussion about the standard of proof in immigration benefit determinations.

### **Additional Collaboration is an Important Way to Combat Benefit Fraud**

Benefit fraud detection is challenging and has created difficulties for federal agencies. USCIS recently revised its policies and reorganized its organizational structure to address immigration security concerns and facilitate fraud detection. One key change is a shift away from employee performance measures that focus on the number of applications or petitions that an Immigration Services Officer (ISO) processes. USCIS also elevated the Office of Fraud Detection and National Security (FDNS) to directorate status. The USCIS Director told us that this change reflects his commitment to antifraud and national security responsibilities. Although FDNS issues fraud policy, fraud detection Immigration Officers (IOs) – based in the field and supervised by the service center or office where they are located – are responsible for identifying and pursuing immigration benefit fraud.

The IO fraud experts work with ISO adjudicators at USCIS offices throughout the country. IOs are responsible for reviewing information when ISOs have a concern about possible fraud.

Therefore, the policies and practices that govern the relationship between ISOs and IOs on particular cases are central to the success of the adjudication process.

ISOs use both national and local fraud indicators to determine whether a file contains possible fraud information. Files are referred to an IO when fraud indicators are evident. The file is accompanied by a written referral memorandum in which the ISO articulates questions and suspicions. The IO conducts research, including Internet searches and queries of databases not available to ISOs, to review the referral. Based on what the IO discovers, a statement of findings is returned to the ISO.

Our review indicated that ISOs seek more direct interaction with IOs. Additional communication between ISOs and IOs would allow ISOs to engage in meaningful dialogue on the reasons for a fraud referral, and how particular information would assist adjudication of the case. Before deciding to send a file to an IO, the ISO would have an opportunity to ask an IO questions about the case, discuss fraud indicators, and determine whether the case warrants a referral. In addition, the ISO could obtain an IO's comments on the adequacy of the referral memo that the ISO sent. ISOs desire confirmation that the information sent to an IO was useful.

ISOs desire more information on fraud detection practices and trends so they can make better fraud referrals. Improved training on fraud issues is a reasonable way to meet this need. IOs could provide general training on immigration benefit fraud, as well as examples of what types of cases should be referred. Our interviewees and survey respondents offered several ideas about how and when training can be provided. The most common suggestion was for IOs to brief ISOs during meetings. At these meetings, IOs could provide information on fraud trends or particular individuals of concern. One survey respondent said FDNS briefings of this type "are very helpful in combating fraud at our office." Another respondent suggested that the ISOs should take the IO training course to expand their knowledge of fraud issues.

Our report recommended that USCIS promote more collaboration between ISOs and IOs. We also recommended that the level of interaction be monitored, and corrected as needed, to ensure maximum efficiency from the relationship between ISOs and IOs. We also suggested additional detail opportunities so more ISOs are temporarily assigned to fraud units. USCIS concurred with these three recommendations.

### **Additional Procedures Can Strengthen Identification of Names and Aliases**

During the adjudication process, ISOs complete security checks on law enforcement and immigration systems to determine whether an applicant is a possible security or criminal risk. Individual aliases or multiple spellings of names complicate the security check process. A staff report of the National Commission on Terrorist Attacks Upon the United States reported that the 9/11 hijackers used 364 different names and aliases. Because files can be large—hundreds of pages in some cases—ISOs can miss aliases during the review of a case file.

Quality assurance data we reviewed demonstrate that further work is needed to identify more aliases in some benefit applications and petitions. Challenges in alias identification are compounded because USCIS uses cumbersome and outdated immigration data systems. Both

USCIS employees and some law enforcement agency users express frustration with USCIS systems. Our recent report on overseas screening noted that information on foreign nationals is fragmented among 17 data systems. Officers must conduct labor-intensive, system-by-system checks to verify or eliminate each possible match to terrorist watch lists and other derogatory information. USCIS intends to solve this problem through its Transformation initiative. In the meantime, we recommended developing additional quality assurance procedures to decrease the risks involved in unidentified aliases. USCIS concurred with this recommendation.

### **Greater Employee Outreach is Key to New Performance Measures**

In fiscal year (FY) 2011, USCIS implemented a new ISO performance evaluation process. The revised ISO performance measures prioritize quality and national security as critical elements. The forms used to evaluate employee performance contain several elements, some of which are critical to successful performance, while others are noncritical. In the past, performance evaluations established production as a critical element. This meant that an ISO had to process a certain number of benefit requests over a given period to earn an excellent rating.

With the new FY 2011 performance measures, production is noncritical to performance. The new ISO performance measures are designed to protect the integrity of the immigration system through a focus on national security and fraud identification. This should improve fraud detection and national security.

USCIS faces a complex task as the new measures are finalized. We learned that ISOs and supervisors are concerned that—

- Insufficient training on the performance measures hinders their success;
- Production remains the focus, even under the new measures;
- Rating an ISO's fraud detection skills is difficult; and
- Certain ISOs will be disadvantaged because of the form types they adjudicate.

Based on these comments and suggestions from staff, we recommended that USCIS perform onsite outreach to discuss the performance measures, as well as solicit comments from field staff about the new measures. Because of the preliminary nature of the FY 2011 measures, USCIS should endeavor to learn as much as possible from the field about how employees view the performance measures. This would facilitate the continued development of performance measures and improve the measures over time. USCIS concurred with our recommendations.

### **Production Pressure Remains a Concern**

ISOs informed us that production pressure remains a part of the adjudication process. ISOs in multiple locations are concerned that production expectations are too high. An important part of our interviewees' concern about production pressure is the perception that USCIS strives to satisfy benefit requesters in a way that could affect national security and fraud detection priorities. The Department of Justice (DOJ) OIG identified similar problems prior to the creation of USCIS. Its reports noted that adjudicators may skip systems checks that could be done quickly because some parts of the process would interfere with timely completion of the required

number of cases. In 2000, the DOJ OIG reported that time pressures “discouraged the pursuit of potentially disqualifying issues” in immigration benefit adjudications. At that time, many adjudications officers said that “the pressure they were under was, in fact, pressure to *approve* applications and not just to complete as many naturalization cases as possible.” The increased likelihood of benefit approvals under such circumstances was obvious.

Approval of a case takes significantly less time and effort than does documenting a denial, writing a fraud referral, or requesting more evidence. ISOs who feel pressed for time or behind in their work, and wish to meet production goals, might opt to approve a marginal case and move on to the next file.

Our interviews and survey responses indicated that district and field office ISOs generally must complete between 12 and 15 interviews per day. Most of the ISOs we interviewed said that they must complete interviews in less than 30 minutes. Fifteen interviews per day, with 30 minutes for each interview, is 7.5 hours per day. These ISOs have other responsibilities, and some interviews last longer than 30 minutes. Such time pressure does not allow the ISO to review cases prior to interviews, or ask questions of coworkers or supervisors.

The comments we received suggest that ISO production expectations have not changed, although an ISO’s performance rating no longer treats production as a critical job element. The new performance measurement system based on fraud and national security identification skills faces significant challenges if production goals remain as prominent across USCIS as our interviewees and survey respondents reported.

A year before the 9/11 attacks, the DOJ OIG suggested that the adjudications process was subject to immense production pressure that should be lessened. In a report released 8 months after the attacks, the DOJ OIG cited problems with immigration benefit issuance for two 9/11 hijackers. A recommendation in that 2002 report suggested that those who adjudicate immigration benefit requests needed “more time to review files and seek additional information.” USCIS did not concur with our recommendation to ensure that ISOs have more time to process cases.

### **Certain Policy Improvements Could Improve Benefit Adjudications**

Several USCIS employees informed us that ISOs have been required to approve specific cases against their will. Some ISOs told us that they complied with the demands of their supervisors and approved visa applications containing suspect information. Other ISO said that a supervisor will reassign a case to another ISO rather than sign a directed decision. One district ISO wrote, “Cases are sometimes taken away from us and given to officers who the supervisor knows will approve the case.” A Service Center Operations senior manager said that supervisors can reassign work in general, so an ISO should not be surprised when a debatable case goes to a colleague. One service center provided us a local policy similar to the senior manager’s views.

USCIS policy actually informs ISOs to not sign a case file if the ISO believes that the facts of the case do not warrant such a decision. When it occurs that a higher ranking and probably more experienced supervisor might disagree, and believe the case approvable, the supervisor is supposed to sign the decision. The USCIS manual states that an ISO should never sign

something when he or she disagrees with the decision, even if a higher ranking officer requests the ISO's signature.

Some ISOs might not be aware of the policy on directed decisions. A survey respondent, who was concerned about production pressure and the drive for approvals, did not know that an ISO could refuse to sign a directed decision. Another survey respondent was threatened with a formal reprimand if a case was not approved as the supervisor required. When discussing another directed decision, one ISO wrote, "management found someone else" after the ISO did not concur with the approval.

Reassigning a file to a second ISO could foster rivalry between ISOs, lead ISOs to please supervisors through approval of problematic cases, and decrease office morale. A supervisor may be correct to override an ISO's judgment in certain cases, but the supervisor should then be required to sign the case as the deciding officer, in accordance with USCIS policy. USCIS concurred with our recommendation to enforce existing guidance on directed decisions.

We also recommended that USCIS make improvements to policy on requests for evidence (RFEs). If additional information is needed before an ISO can make a decision on a case, a RFE is sent to the applicant or petitioner. An RFE allows the individual who seeks the benefit to provide further proof of entitlement. Although the need for RFEs in some situations is obvious, the USCIS adjudications manual establishes that "RFEs should, if possible, be avoided," while also guiding ISOs "to request the evidence needed for thorough, correct decision-making."

Quality assurance data demonstrate the effect of ISO confusion about RFE policy. Quality reviewers noted incomplete evidence in some approved petitions. RFEs, rather than approval letters, should be issued in cases where evidence is unclear. Also, there were inconsistencies in RFE issuances in some cases where denial letters were sent, although additional evidence could have demonstrated entitlement to the benefit. USCIS should rewrite current policy, which establishes the avoidance of RFEs as a policy preference. New policy would diminish ISO confusion about the role of RFEs in the adjudication process.

Because of contradictions in the *Adjudicator's Field Manual*, USCIS' RFE policy is not clear. This lack of clarity, coupled with continued pressure to process applications and petitions, decreases the chance that RFEs will be issued. Suppressing RFE issuance is not the best response to the problem of inconsistent or improper RFEs. Clarification of USCIS policy in this area, in tandem with the RFE template improvements that are being implemented, should lead to better RFEs, less public confusion, and improved adjudication decisions. USCIS concurred with our recommendation to improve RFE policy.

### **USCIS Should Focus on Eliminating Inappropriate Pressure on the Adjudications Process**

Many employees expressed concerns about how a small number of individuals in the USCIS Office of Chief Counsel (OCC) attempted to increase the approval of O visa benefit petitions. Congress created this status for aliens who have extraordinary ability in science, arts, education, business, or athletics. OCC informed service centers that certain questionable petitions should be approved and initiated changes to USCIS policy on O visas.

An O visa petition, that a university filed, led to much internal USCIS debate in late 2009. Based on our interviews, unease about this case and others like it still lingers throughout the agency. The California Service Center (CSC) denied the petition, based on insufficient evidence that the beneficiary had achieved the extraordinary ability that the statute requires. Senior OCC officials disagreed with the CSC's decision. This prompted a great deal of discussion and email about the appropriateness of the denial. OCC attorneys at the CSC generally supported the center's decision, but the former USCIS Chief Counsel remained adamant that an approval was necessary. Subsequently, the center's denial was upheld by a 26-page opinion from the USCIS Administrative Appeals Office (AAO). Although the AAO upheld the original CSC decision, a belief that USCIS headquarters wanted to push a high level of approvals has affected USCIS managers and ISOs.

OCC management attempted to change USCIS policy on O visas shortly after the university's petition was denied. In early 2010, OCC expressed heightened interest in O visa adjudications as a result of public complaints. One private attorney was concerned specifically about O visa petition denials from the CSC. This attorney admitted that he had not reviewed each of the cases, but he wrote directly to an OCC manager with his concerns that ISOs at the CSC issued inappropriate denials.

Like the complainant, the OCC manager had not examined the case files. Nonetheless, in an email to the CSC, which included a draft memo on O visa adjudications policy, the OCC manager noted the attorney's complaint and perceived problems with the CSC's denial decisions. The OCC manager declared an interest in "a more flexible and liberal policy for weighing the evidence and granting petitions."

Quality assurance information we examined demonstrates that excessive O visa approvals are more likely than denials. Service Center Operations staff conducts random reviews of completed I-129 adjudications. We analyzed 10 reports from these reviews that took place between November 2008 and February 2011. The quality assurance reviews revealed that some of the denials included statements such as, "No evidence to establish that the beneficiary qualifies as an alien of extraordinary ability," or "insufficient evidentiary criteria" to support the approval. Additionally, of the O visa petition denials we reviewed, there were no inappropriate denials. The data confirmed that USCIS was more likely to grant O visa status incorrectly, than to deny a legitimate petition.

As occurred in the university's case, the USCIS AAO frequently supports the ISO's decision on appeal. From January 2010 through February 2011, O visa petition appeals succeeded only 4 times out of 44 cases, a 9% success rate. The quality assurance and AAO data suggest that ISOs generally make good O visa petition denial decisions.

The intent of OCC's efforts in this area is unclear. Without reviewing individual cases, we are unable to determine how OCC could conclude that ISOs made improper decisions based on the statute or regulations. Because data and our analysis refute OCC's contentions, we believe that in certain instances OCC may have improperly responded to outside complaints through undue pressure on adjudication decisions. We recommended new policy to limit a manager or

attorney's ability to intervene in case decisions. Of course, USCIS attorneys must have contact with ISOs to provide legal advice on the correctness of decisions, what evidence is necessary, and other areas pertinent to adjudication decisions. Our concern is with those cases where OCC leaders may create pressure on the adjudications process so that improper approvals are or could be made. USCIS did not concur with our recommendation, but suggested a way to potentially meet the intent of our recommendation. We look forward to the USCIS corrective action plan in this area.

We understand that USCIS must engage with outside experts and be responsive to public questions. Caution should be exercised, however, when appearance of favors or special consideration exists.

On the issue of outside complaints creating a climate that stresses benefit approvals, USCIS faces the burden of history. In 2000, the DOJ OIG, in a review of INS actions during the Citizenship USA initiative, identified cases where outside entities "attempted to influence or manipulate" adjudications in a variety of ways, including pressure to approve cases or requests to transfer cases to adjudicators perceived as more lenient. The DOJ OIG wrote that adjudicators "perceived a perpetuation of the historical favoritism shown to certain organizations." According to interviewees and survey respondents, a culture of "get to yes" continues to exist at USCIS.

Some private attorneys recognize that their requests for special review are improper. In a note to an OCC manager, a private immigration attorney was "very aware that it is not permissible" to ask for special review of a case, but the attorney asked for OCC intervention. OCC forwarded the email to certain individuals in USCIS, which led the CSC to review the case again. After that review, the denial determination was reaffirmed.

ISOs and supervisors claimed that any informal process where an ISO is asked to review a case again implies that an approval is expected. One supervisor said that when a special review is requested, the center will "try to find a way to approve something." These types of actions have the potential to create a two-tier immigration benefit system: Those with private attorneys or contacts at USCIS get special treatment, while others do not. Although we received evidence that the Director of USCIS does not support special treatment for complainants, more attention must be paid to this matter.

USCIS has yet to find an effective balance between its interaction with the public, especially immigration attorneys, and the need to protect the integrity of the adjudications process. This is a dilemma, because many people have an interest in USCIS decisions, and public comment is vital to the regulatory process. USCIS should strive to recognize the differences between legitimate public opinions and requests to change individual case decisions. Those who gain a special review of their case essentially receive a second adjudication without having to file an appeal.

We recommended that USCIS end any informal appeals process. USCIS did not concur with our recommendation.

## **The Standard of Proof for Immigration Benefit Issuance is an Important Consideration**

In most USCIS adjudications, the evidentiary standard is “a preponderance of the evidence,” a common standard in civil proceedings. Two other common standards, “clear and convincing evidence” and evidence “beyond a reasonable doubt,” require a higher level of certainty. A preponderance of the evidence is greater than a 50% certainty that a fact is true. ISO managers view clear and convincing evidence as approximately 75% certainty, and proof beyond a reasonable doubt as 95% or more certainty. These percentages illustrate the differences between standards, although an exact percentage may not be easy to quantify in a given case.

To protect the immigration system further, Congress may wish to raise the standard of proof for some or all USCIS benefit issuance decisions. A relatively low standard of proof may not account for all societal interests involved in the issuance of immigration benefits.

Even with the additional security checks and process improvements USCIS has made in the past several years, national security and fraud concerns may require more thorough review of immigration applications and petitions. These concerns may increase the time needed to process benefit requests. Concern about delays in issuing benefit determinations should not override all other interests. The potential negative effect of ongoing production pressure, the desire for longer interviews of applicants, and the incomplete nature of the new performance measures means that much work remains before USCIS instills a culture that emphasizes quality over quantity. A higher standard of proof, and implementation of this report’s recommendations, offer a variety of means to improve the benefit issuance process.

Mr. Chairman, this concludes my prepared statement. Thank you for the opportunity to testify and I welcome any questions from you or Members of the Committee.