



**Homeland
Security**

Questions and Answers

The CIS Ombudsman's Webinar Series: 2023 Annual Report

If you have additional questions or feedback regarding the [2023 Annual Report](#), please email us at CISOmbudsman.publicaffairs@hq.dhs.gov.

Questions regarding “Backlogs in the Long Term: 2022 in Review”

Q1. The article on backlogs states, “Delays, especially lengthy ones, exact a price to those whose applications, and petitions remain pending.” But these are people who are here, so what real problems do they face?

A1. Delays in adjudicating an immigration benefit have a significant impact. They essentially put the requestor into stasis – they cannot move forward in their immigration journey, but that also means they cannot move forward in their lives. For example, people who do not get Green Cards do not accumulate the time needed to naturalize, vote, or take certain jobs. Families cannot be reunited. People cannot work legally. It’s cumulative, and it can cause repercussions for years.

Q2. If USCIS receives no funding from Congress (as the House just proposed in its budget for DHS), what is the impact on its backlogs?

A2. USCIS gets almost all of its funding from its fees – 95% to 97%, depending on the year. It has sought Congressional appropriations to assist with backlog reduction efforts and those activities for which it does not receive sufficient fees, such as work with the recent parole populations and asylum stemming from those seeking such status at the border. That work has grown exponentially in the last few years as global political, climate, and other events have impacted migration flows and increased populations needing protection. The agency is currently working under a fee rule that, due to litigation, contains data and assumptions that are almost a decade old. The impact will mean that backlogs continue as resources are spread thin among the many priorities that confront the agency.

Q3. Is the backlog affecting different parts of an application process? For example, some citizenship applicants who applied in 2020 and 2021 are still waiting to receive interview appointments. Meanwhile, others have completed the interview and have been waiting for months to receive the approval and be scheduled for a naturalization ceremony. Others had

either the interview or the ceremony cancelled. Would this be related to the backlog, or could it be related to background checks?

A3. Immigration backlogs – entire types or batches of cases – are somewhat distinct from individual cases, which can be delayed for all kinds of reasons. Individual cases involve legal decisions that are based upon many factors, and any one case can be delayed beyond similar cases for different reasons. Batches of cases as a group can also be affected for many reasons, including the prioritization of some types of cases that lessen the priority of others.

Questions regarding “The Growing Humanitarian Mission of USCIS and its Impact on Future Workloads”

Q4. If USCIS does not obtain funding for these workloads from Congress, why can’t it simply get the funds from the applicants themselves? After all, they are the ones who benefit from USCIS’ work.

A5. Once these populations enter the immigration system, there are several possible benefits for them, several of which can be sought simultaneously. USCIS works on a fee-for-service funding model, charging what it costs to provide a benefit or a service. While it might be possible for USCIS to start charging the actual cost to process and adjudicate some of these benefits, it would likely be pricey for many applicants needing help. Meanwhile, fee waivers are available for certain filings, whether by statute or otherwise. Other fees cannot be changed; for instance, the fee for applying for TPS is legally mandated at \$50, and thus there is no correlation between the legislated amount and what USCIS spends on adjudication, even if, ultimately, USCIS does receive appropriated funds for them.

Q5. The humanitarian parole article recommends that USCIS seek appropriations to address additional workloads created by new humanitarian programs, many of which do not require a fee for the benefit requested. Given that the House and Senate have different majority parties, it is unclear whether such funds would be appropriated. What can USCIS do to manage its workload given the uncertainty surrounding such funding?

A5. The article provides several recommendations, each of which can be taken separately or pursued together to mitigate the impacts of these workloads. For example, USCIS can immediately develop streamlined mechanisms and approaches to these programs by leveraging past success, such as adopting population-specific approaches. It can eliminate the need for a separate work authorization application from each parolee and expand automatic work permit renewal periods. This would reduce the number of forms USCIS needs to adjudicate. A more robust communications strategy would mitigate against incomplete filings and reduce the need to request additional evidence from applicants.

In the long term, USCIS can better group asylum-applicant populations to more efficiently allocate resources and can employ a risk-based re-use of biometric information to perform security checks as opposed to re-collecting this information for all renewals. These improvements would serve USCIS in better managing these workloads even if it does not receive appropriated funds for them.

Questions regarding “The Use of Requests for Additional Evidence in L-1 Petitions”

Q6. The CIS Ombudsman recommends that USCIS create an RFE Quality Assurance Program. Have you discussed this proposal with the agency, and what would you imagine such a program would look like?

A6. During several engagements with USCIS, we did signal that we were considering this as a possible recommendation. We do know that implementing a quality assurance (QA) program will require the agency to commit new resources in terms of time and money to support the necessary personnel who will be reviewing requests for evidence (RFEs) and analyzing their findings. That said, we believe that over time the implementation of a QA process for RFEs will reduce the issuance of unnecessary RFEs and lead to sharper and more precise RFEs. In the long run, we are hopeful that a robust RFE QA program will reduce the costs of adjudications and positively impact processing times.

The CIS Ombudsman's Office is willing to work with USCIS to develop such a QA program. As a start, we suggest that the agency develop a method to track and analyze individual adjudicator RFE rates and to compare them against the arithmetic mean rate for all adjudicators working on a particular product line, such as L-1As, or L-1Bs. With just this initial step, outliers will be identified, which may result in adjudicator-focused training and/or monitoring. Of course, whatever QA program is developed, it must be systematized, tracked, and kept in place over years, not months, to determine its effectiveness.

Q7. The Annual Report states that RFEs for H-1B nonimmigrant workers appear to be at “a nominal level” but are much greater for L-1s. The article speaks to insufficient training on the preponderance of evidence standard, generally, yet the agency seems to apply it correctly to H-1Bs. Can the CIS Ombudsman explain this?

A7. As we noted in the article, many of the recommendations would apply to other nonimmigrant categories. However, the eligibility requirements and evidence that must be analyzed are different for each category. We focused on L-1s for this article, and we believe the classification would benefit from more extensive and consistent training on real-world, case-based factual scenarios to ensure a more consistent approach to the preponderance of evidence standard.

Q8. Do you believe that any of the issues you identified in your RFE article as problematic can be mitigated through the greater use of technology?

A8. Yes, we do. As USCIS continues to utilize information technology advancements—including electronic processing, data analytics, and perhaps even artificial intelligence during the intake and processing of immigration benefit requests—fewer RFEs might be expected as the agency can retrieve and consider relevant information from previously submitted petitions. Additionally, the increased use of data analytics can help identify data errors or decisional outliers that may trigger a quality assurance assessment. That said, technology alone will never replace or serve as a substitute for well-trained and experienced adjudicators.

Q9. Are the CIS Ombudsman's recommendations regarding RFEs specific to L-1 petitions or applicable to all RFEs?

A9. Many of the L-1 RFE recommendations are also applicable to other petitions and applications, and we specifically note this in our Annual Report.

Questions regarding “Temporary Protected Status: The Impact and Challenges of Increased Demand”

Q10. An individual with TPS is eligible to work in the U.S. and return to the U.S. after travel abroad, but they must apply to USCIS to receive proof of these benefits. For example, TPS beneficiaries file Form I-765 to request proof of employment authorization, and USCIS has seen an increase in this form type along with the Form I-821. One recommendation the CIS Ombudsman makes is to eliminate the separate employment authorization document (EAD) application for TPS applicants. Can you explain more what this could look like in practice?

A10. The customary practice is to submit the Form I-821 and I-765 together to USCIS; however, the streamlined processing that USCIS implemented for humanitarian parole populations show there is another way. Instead of submitting both forms, allow the EAD request to be done on the Form I-821. Applicants can already indicate on the Form I-821 that they would like an EAD. To change the wording on the form so it does not require filing a separate Form I-765 will take time, but USCIS’ streamlined processing of re-parole and EAD renewal for Afghan nationals shows this recommendation is operationally feasible.

Q11. No new countries have been designated for TPS thus far in 2023, but DHS has extended, and in some cases also redesignated, TPS for most of the 16 designated countries. Most recently, the DHS Secretary reinstated and extended TPS designations for El Salvador, Honduras, Nepal, and Nicaragua for 18 months. What impact will these actions have on USCIS?

A11. USCIS could potentially receive over 300,000 requests for TPS re-registration from nationals of the extended/redesignated countries. In addition, TPS beneficiaries will continue to impact the agency’s workload in other areas, specifically through work and travel authorization requests. We believe that our recommendations would help USCIS manage these applications while also balancing their myriad other priorities, such as the additional humanitarian parole programs, family and employment-based adjustment of status, the asylum backlog, naturalization, and nonimmigrant processing, among others.

Q12. TPS does not lead to lawful permanent resident status or U.S. citizenship, but noncitizens have been in the United States with TPS for longer than the initial 18-month period of authorization as DHS repeatedly extends their country’s TPS designation. Is there a permanent pathway to citizenship for these individuals?

A12. TPS is meant to be temporary but the circumstances that trigger a TPS designation can have long-lasting impacts on the country and can require far more than 18 months to recover from. Although TPS does not provide a path to lawful permanent resident status or U.S. citizenship, recipients can apply for a more permanent immigration status if they become eligible, such as via asylum, family relations, or other means.

Questions regarding “A Look Back at USCIS’ Unprecedented Fiscal Year 2022 Efforts to Use All Employment-Based Immigrant Visas”

Q13. A number of the adjustment of status applications of the derivative family members were not adjudicated along with the principal applicant. For many of these derivatives, a visa number is no longer available. Please provide, if possible, an estimate of the number of family members who fall into this description. And additionally, what are some typical reasons why some derivative adjustment applications would not move forward with the principal?

A13. USCIS provided data that as of March 6, 2023, there were approximately 1,800 pending adjustment of status applications submitted by derivative spouses and children where the principal applicant was approved in FY 2021 or FY 2022. Approximately 1,200 of those applications did not have an available visa per the March 2023 Visa Bulletin. Typically, one of the primary reasons a derivative applicant does not get approved with the principal applicant is for security reasons. If the background checks are completed for the principal but not for the derivative, the principal's case will move forward without the derivative. Another reason could be that USCIS issued an RFE or notice of intent to deny (NOID) for the derivative's application but not the principal's, which would once again delay the derivative's case.

Q14. The employment-based (EB) visa look-back mentions USCIS' acknowledgement that FY 2022 encompassed certain tradeoffs in its workload with the agency's prioritization of EB visas in that fiscal year. Given USCIS' statement that it's again committed to using all EB visas for FY 2023—at approximately 197,000 much lower than the totals seen in FYs 2021 and 2022, but still higher than in pre-pandemic years—should we again expect similar tradeoffs for benefits other than those in the EB line? For instance, are we likely to see increased processing delays and continued growth in backlogs for the agency's family-sponsored workload?

A14. With any agency that relies upon fees for its existence, the resources are finite. USCIS is no exception. USCIS has, however, turned its attention to processing family-based petitions and adjustments and has implemented several streamlining strategies to improve processing timelines while still maintaining the integrity of its adjudications. The lower number of EB visas available, plus these streamlining measures (such as applying risk-based assessments on whether to conduct interviews), should enable the agency to use its finite resources to greater effect on those categories impacted in the previous year.

Q15. During the October webinar hosted by the CIS Ombudsman, representatives from USCIS mentioned the problem of uneven availability of "adjudication-ready" inventory during the surge that occurred in FY 2021. Please specify what makes an EB application "adjudication-ready"?

A15. While there is no specific category that USCIS labels "adjudication-ready" when managing its EB inventory, USCIS differentiates between applications that are "visa available & petition approved" and those that are not. "Visa available" means that the applicant has a priority date earlier than the date shown in the Final Action Dates chart for their country and category (or the Visa Bulletin shows that the category is Current). "Petition approved" means that the petition underlying the particular adjustment of status application has been approved.

Q16. One of the processes widely adopted in FY 2022 that contributed to USCIS' success in using the maximum number of EB visas was the practice of transferring the EB workload to any field office that could complete that workload. Can you tell us, were there particular criteria that assisted in identifying the field offices that could take on this additional

workload? And alternatively, did USCIS identify and exclude any specific field offices from receiving this workload so that they could instead focus its primary work on other product lines, such as naturalization?

A16. In general, USCIS assigned the EB workload to the offices with the greatest capacity to complete the case work in a timely fashion. The agency did not pre-select particular offices but rather analyzed the work queues continuously to determine where those cases would be worked. Consequently, no offices were pre-identified as not handling the EB workload. Any field office could be designated to work the employment-based cases. Offices with significant backlogs or with less staffing, however, were less likely to receive any great quantity of EB work. Constant monitoring of the EB workload and overall capacity of a field office is the determiner when assigning this case load.

Questions regarding “Improving the Customer Experience from the Contact Center to the Field”

Q17. The article on customer experience speaks about fostering working relationships between Contact Center staff and field office staff to better assist customers. Can you go into more detail how this would be beneficial to the customer?

A17. The goal is to be able to resolve the customer’s inquiry during their initial call or shortly thereafter. By developing stronger working relationships between the Contact Center and field office staff, there is an increased opportunity that the Contact Center representative can connect—either by phone or through one of the several electronic options—with their point of contact (POC) in an office while the customer is still on the call. In an ideal situation, the customer will get their issue resolved at first contact. If not, at a minimum, there will at least be clearer next steps.

This also benefits the agency since it will not have to invest additional resources in either calling or emailing the customer back later. Not everyone at the Contact Center will have at least one POC in each office. However, even having a list of POCs for a third of the offices, preferably offices located in the most metropolitan areas which have a larger number of customers/filings, will prove to be of value.

Q18. The customer service article mentions a live chat function via USCIS.gov. This is a resource that the public does not know much about. Could you speak more about the live chat and share where we can read more about it?

A18. USCIS’ virtual assistant tool, Emma, has a live chat function. When using Emma, the system determines if the user needs to be connected to a live agent based on the topic the person is inquiring about. Please find more information in the “Get Information” section of the [USCIS Contact Center](#) page.

Q19. Regarding customer service, the public would appreciate being able to go to USCIS appointments at the most convenient field office instead of the field office assigned to them according to where they live. Any consideration to expand this flexibility beyond InfoPass appointments? Perhaps to naturalization interviews?

A19. We hope the agency will consider adopting this approach for InfoPass. Unfortunately, naturalization interviews and other services have jurisdictional restrictions. We encourage USCIS to fully maximize its flexibilities; the more it can take advantage of permissible flexibilities, the more the agency can use its resources on cases and services where it has fewer options to be flexible.

Q20. The customer service article explains the Contact Center's structured tier system. Is there any way that the caller can use a prompt on the automated system to be connected directly to a Tier 2 officer?

A20. There is no option to select which tier you speak to when calling the Contact Center. The process is designed to connect you to a live agent if the inquiry warrants it after you go through the Interactive Voice Responses. Each representative will escalate to the next level/tier if needed.

Other questions

Q21. I applied for a K-1 visa over a year ago. USCIS has received my fees, but I have not heard anything from the agency. What can I do? How long will it take to get a reply regarding my application? Additionally, is it better to have an account with USCIS to expedite my visa?

A21. We cannot answer any case-specific questions as we are not USCIS, but you can find the average processing times on USCIS' [Check Case Processing Times](#) page. If your case is outside of processing times, you can file an inquiry using USCIS' [Case Inquiry](#) page. You can also reach out to Ask Emma or contact the USCIS Contact Center at 1-800-375-5283. If you have done multiple of those actions already, you can file a case assistance request with the CIS Ombudsman's Office. See our [How to Submit a Case Assistance Request](#) page for more information.

Many people find a [USCIS online account](#) helpful since they can get updates there more quickly and it reduces the risk of notices getting lost in the mail if addresses change. If you would like to expedite your case, see USCIS' [How to Make an Expedite Request](#) page. Make sure to submit all the evidence you have of the urgent circumstances.

Q22. How is USCIS handling humanitarian parole requests and Form I-134A, *Online Request to be a Supporter and Declaration of Financial Support*? Is it first-in/first-out, random, or a different system?

A22. USCIS recently [announced](#) how it is updating its review process for Forms I-134A filed under the Processes for Cubans, Haitians, Nicaraguans, and Venezuelans.

Q23. I have observed that applications submitted in 2022 are being processed in a timely manner, while applications submitted in 2020 and 2021 are not. Is withdrawing a pending application and reapplying again considered a good option?

A23. We cannot offer legal advice, but generally, it is our understanding that refiling may simply delay the ultimate resolution of any case.

Q24. USCIS' pause on Form I-485, *Application to Register Permanent Residence or Adjust Status*, for nationals of all countries in the special immigrant category has had significant impacts. What is the hope of this pause being lifted and the backlog being cleared?

A24. The Department of State (DOS) determines the availability of EB-4 visas under the immigrant visa distribution and allocation framework established in the Immigration and Nationality Act. Currently, the DOS Visa Bulletin cut-off date for EB-4 including special immigrant categories is September 1, 2018. Based on discussions with DOS, it is likely that this date will not advance through the remainder of this fiscal year. A change in the cut-off dates in family-sponsored and employment-based immigrant visa categories can be anticipated in the first quarter of fiscal year 2024.

Q25. Does USCIS have any plans to utilize the unused immigrant visa numbers from 1992 to 2021?

A25. DHS/USCIS does not have independent power to recapture and utilize unused immigrant visas from previous years. Congress has from time to time recaptured some portion of lost numbers and made them available for special use, such as dedicating them exclusively for use by registered nurses to address the nation's nurse shortage. See the [American Competitiveness in the 21st Century Act in 2000](#) and the [2005 "Making Emergency Supplemental Appropriations for Defense, the Global War on Terror, and Tsunami Relief" bill](#), which together previously recaptured almost 200,000 unused visas.