



# IMMIGRATION POLICY CENTER

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## **POLICY BRIEF**

### **The Endless Wait: Will Resources Match the Resolve to Reduce the Immigration Case Backlog?**

*Congress and the White House have pledged for a decade to reduce the backlog of immigration cases, but without providing the resources necessary to do the job.*

For more than 10 years, the government agencies charged with administering our nation's immigration laws have been plagued by a growing backlog of cases and delays in processing applications. The creation of U.S. Citizenship and Immigration Services (USCIS) and abolition of the Immigration and Naturalization Service (INS) has changed the name of the agency in charge, but the problem persists. A General Accounting Office (GAO) report issued in May 2001 found that the INS application backlog had increased nearly four-fold since Fiscal Year (FY) 1994 -- from 1 million to 3.9 million.<sup>1</sup> Recent reports from USCIS indicate that while some progress has been made, there are still 3.7 million cases identified in the backlog. The result is that many of those seeking to come legally to the United States must wait several years for their cases to be adjudicated, with serious consequences for U.S. businesses and families. Over the years, piecemeal attempts by the agency to reallocate available resources in order to reduce the backlog have only made the situation worse. Reductions in one area of the backlog have simply resulted in even greater backlogs in other areas. These experiences indicate that it is time for a holistic approach and a serious commitment by Congress to provide the agency with the resources it needs.

On June 17, 2004, Eduardo Aguirre, Jr., Director of USCIS, testified before the House Subcommittee on Immigration, Border Security and Claims (chaired by Rep. John Hostettler (R-IN)) about the "Backlog Reduction Plan for Immigration Applications." Several days later, on June 23, the Subcommittee's hearings continued with witnesses responding to USCIS' proposals and speaking about the detrimental impact of processing delays, or "backlogs." All the witnesses, including Aguirre, agreed that response times on immigration and naturalization petitions were unreasonably long and having serious negative impacts on separated families and businesses trying to hire new employees. The "Backlog Elimination Strategy" proposed by USCIS relies mainly on information technology and new "fee for service business models" and promises to eliminate the backlog by end of 2006. Yet, this strategy appears doomed to failure given the lack of serious funding for new systems and personnel.

#### **Defining the Backlog**

Each year USCIS receives about 6 million applications. From FY 2001 to the end of FY 2003 the number of pending applications increased by 59 percent as a result of revised USCIS case-handling procedures implemented after September 11<sup>th</sup>. Major increases in background checks slowed the

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adjudication of applications, while hundreds of adjudicators were redeployed from their duties for other assignments. Many of these reassigned personnel have now returned to their USCIS adjudication responsibilities, but the backlog of applications has declined very little.

Director Aguirre defined the backlog as the number of cases that exceed their “cycle time,” or targeted processing goal. For instance, naturalization and adjustment-of-status applications have a 6-month cycle time, while applications for non-immigrant workers, change of status, and employment authorization have 3-month cycle-time targets. Using this definition, USCIS calculated the backlog of cases exceeding these cycle times as approximately 3.7 million at the end of 2003.

For applicants, however, cycle times are only part of the story. From the agency’s perspective, almost any action taken on an application within its cycle time can keep the case from being classified as part of the backlog, even if the case remains pending. Thus, requests for additional evidence, delays in security checks, and transfer of cases to the Administrative Appeals Office produce a secondary or “hidden backlog” the agency does not account for in its processing time reports.<sup>2</sup> These delays can add months or even years to the processing of an application from the time it arrives at the agency until it is granted or denied. If, as Director Aguirre testified, the goal of a backlog reduction strategy is to “provide immigration information and benefits in a timely, accurate, consistent, courteous, and professional manner,” then the plan must begin with an honest assessment of how the agency handles its caseload.

## **Negative Effects of the Backlog**

There are many examples of serious negative consequences arising from the backlog. Applicants who patiently remain abroad to be reunited with their relatives are often kept waiting for years and forced to re-file their applications when their fingerprint records expire after 15 months. Many college scholarships available only to permanent residents or U.S. citizens are lost to applicants trapped in the backlog. If USCIS does not process applications before the applicants’ nonimmigrant visas have expired, the applicants can lose their state driver’s licenses because their nonimmigrant status is no longer valid. Some states require a Social Security card from anyone applying for a driver’s license. But, Social Security cards cannot be issued until the Social Security Administration has verified an individual’s immigration status with the Department of Homeland Security.

Adjudication delays also cause applicants to lose jobs and frighten away talented immigrants, while encouraging others to pursue non-legal avenues to stay in the United States. Moreover, the delays have an adverse impact on U.S. businesses. As business immigration attorney Elizabeth Espin Stern testified before the House Immigration Subcommittee, businesses in an intensely competitive global market for people of talent, particularly in technical and scientific fields, are discouraged from expanding their U.S. operations and forced to go offshore due to processing delays. She noted that a “recent study by eight renowned business associations indicates that visa delays alone have been responsible for some \$31 billion in lost dollars to U.S. business since July 2002.”<sup>3</sup>

## **A Question of Resources**

USCIS Director Aguirre's proposed solution to the backlog relies heavily on better technology to identify low-risk cases for fast-track processing; electronic biometrics to store fingerprints, photographs and signature information, thereby eliminating redundancy in new or re-filed applications; better on-line customer services including e-filing,<sup>4</sup> outsourcing, and sending case updates by email; and improved internal procedures to eliminate unnecessary re-filing of evidence, as well as issuing Employment Authorization Documents (EADs) valid up to 5 years. Four pilot projects have been launched to evaluate the effectiveness of these measures in improving customer services and reducing backlogs. Director Aguirre admits he is relying on an almost 20 percent increase in efficiency to meet his backlog-reduction goals.

In early 2001, President Bush proposed funding of \$500 million over 5 years (\$100 million per year) to reduce processing times to less than 6 months. Unfortunately, in the hide and seek game of federal appropriations, the question of exactly how much additional funding USCIS is getting is difficult to answer. In a February 2004 news release, the agency announced that it would request a 60 percent increase in funding dedicated to backlog reduction, bringing the total request for appropriations to cover operating expenses to \$140 million. However, compared to the \$235 million appropriated in FY 2004, funds to cover operating expenses at the agency appear to have been cut by \$95 million. The American Immigration Lawyers Association (AILA) has also pointed out that the proposed USCIS budget for FY 2005 requires for the first time that overhead costs (fixed expenses such as file maintenance, payroll functions, etc.), projected to be \$155

million, must be paid out of the user fee account instead of through directly appropriated funds.

The serious consequences of such cost shifting were addressed in the testimony of Paul Zulkie, President of AILA: "Because of the backlogs, the agency is in the constant situation of using new filing fees to pay for adjudication of applications filed in previous years. Essentially, the agency is using new sales to purchase old inventory, with no visible means to pay for the new inventory that continues to come in... Paying overhead out of the fee account is a particularly dangerous action and could be the factor that finally causes the pyramid to fall. Overhead does not rise and fall with the number of applications: it remains fixed whether the agency gets one application or one million. But if, as has happened in the first part of this year, the volume of applications decreases, so does the income generated from fees. And there is no reliable stream of income to continue to maintain the fixed expenses. Overhead is an amount that must come from directly appropriated funds."<sup>5</sup>

Director Aguirre indicated that he is satisfied with the size of his budget, and expressed confidence in his ability to meet processing goals with the money and resources he has available. However, other witnesses testifying before the Subcommittee voiced concern that USCIS is relying too much on user fees for its funding (particularly the \$1,000 per case fee for "premium processing"), cannot bring in new personnel to address the backlog because of a DHS hiring freeze, and continues to be saddled with unfunded mandates that rob it of existing staff, as happened after September 11<sup>th</sup>. In addition, as Ms. Stern pointed out in her testimony, timely adjudication of cases cannot be the only goal. Decisions by the agency must also be

based on the correct legal standards, which require the establishment of consistent adjudication standards and the timely promulgation of new regulations.

## **Conclusion**

Congress and the White House have pledged for a decade to reduce the backlog of immigration cases, but without providing the resources necessary to do the job. Instead, they have under-funded immigration services and then played a shell game with the money, moving funds from one problem area to another even though the funds are

insufficient to actually solve the problems. Meanwhile, applicants are left to pay higher and higher fees to file applications that may sit for years without being acted upon. The determination of the newly formed USCIS to finally eliminate the backlog of cases is encouraging. However, if lawmakers truly wish to reduce the backlogs, the Administration must ask for – and Congress must appropriate – the funds needed to do so.

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## **Endnotes**

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<sup>1</sup> U.S. General Accounting Office, *Immigration Benefits: Several Factors Impede Timeliness of Application Processing*, May 2001.

<sup>2</sup> Testimony of Paul Zulkie on behalf of the American Immigration Lawyers Association on “Families and Business in Limbo: the Detrimental Impact of the Immigration Backlog,” before the Subcommittee on Immigration, Border Security and Claims, House Judiciary Committee, June 23, 2004, Washington, D.C.

<sup>3</sup> Citing The Santangelo Group, *Do Visa Delays Hurt U.S. Businesses?*, Washington, DC: June 2, 2004.

<sup>4</sup> E-filing began with two of the most frequently filed forms in 2003. By the end of FY 2006, it is planned that twelve forms representing 90 percent of the applications for benefits will be available.

<sup>5</sup> Testimony of Paul Zulkie, *ibid*.