

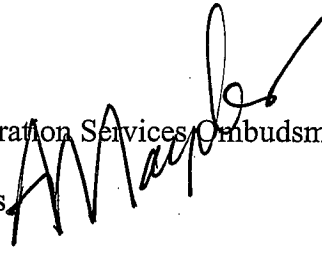


U.S. Citizenship
and Immigration
Services

OCT 12 2010

Memorandum

TO: January Contreras
Citizenship and Immigration Services Ombudsman

FROM: Alejandro N. Mayorkas 
Director

SUBJECT: Response to Recommendation Regarding the Processing of Waivers of
Inadmissibility

USCIS appreciates the careful and thorough review that the CIS Ombudsman's Office conducted of the adjudication process for Form I-601, Application for Waiver of Grounds of Inadmissibility, in the USCIS Office in Ciudad Juarez (CDJ). USCIS welcomes the opportunity to respond to the six recommendations made by the Ombudsman.

Recommendations

The CIS Ombudsman recommends that USCIS:

- Centralize processing of all Forms I-601 to deliver faster and more standardized adjudication;
- Provide for concurrent filing of Form I-601 and Form I-130, Petition for Alien Relative;
- Prioritize the finalization of its overseas case management system (currently in development) to provide for accurate statistical reporting of Forms I-601, allowing for: (1) posted processing times, and (2) tracking via the "My Case Status" feature on the USCIS website;
- Publish clear filing instructions to guide customers in need of expedited Form I-601 processing;
- Improve coordination between DOS consular officers and USCIS adjudicators who work with Forms I-601 at CDJ; and,

- Amend CDJ's office policy to allow USCIS employees to request digitized Alien Files (A-files) upon receipt of interview schedules.

USCIS Response to the CIS Ombudsman's Recommendations

Although the Ombudsman's report focuses on the process followed at CDJ, the recommendations, for the most part, are pertinent to all filings of Form I-601 at overseas locations. USCIS has considered the recommendations in this context.

The report identified the following four areas of concern, each of which is addressed by one or more of the recommendations:

- Disparity of processing times between on-site adjudication and referred cases.
- Limited access to, and standardization of, information for customers.
- Discrepancies in interpretation of the extreme hardship standard.
- Forms I-601 filed by pro se applicants.

1. Centralize processing of all Forms I-601 to deliver faster and more standardized adjudication.

USCIS Response: USCIS agrees in part.

USCIS is currently evaluating different organizational models for processing Forms I-601 filed overseas, with the aim of enhancing consistency and efficiency, optimizing use of USCIS resources, and further decreasing processing times for cases that cannot be quickly approved. While centralization is one model that could further these goals, other models, such as bi-specialization (i.e., processing particular forms in two locations only), may have some advantages. For example, bi-specialization enables continuity of operations when one organizational unit's operations require temporary suspension due to weather, accidents, technological emergencies, and similar disruptions.

In the Ombudsman's discussion of how centralization would enhance efficiency, there appears to be an assumption that USCIS would eliminate the triage process. The triage process, however, has provided significant benefits to applicants whose cases are clearly approvable at the time of filing and has been well received by stakeholders. USCIS agrees with the Ombudsman that it is important to reduce the disparity in processing time between cases that are approved through the triage process and those that are referred, and we are pleased to report that our backlog elimination plan is on track to accomplish that goal. As a result, we have under consideration organizational models that would enhance efficiency and foster greater consistency without necessarily eliminating the triage process.

USCIS expects the analysis to be completed in early FY2011 and welcomes the Ombudsman's Office's continued engagement throughout this process.

2. Provide for concurrent filing of Form I-601 and Form I-130, Petition for Alien Relative.

USCIS Response: USCIS is considering this recommendation.

In April 2010, USCIS formed a working group under the leadership of the Office of Policy and Strategy to explore concurrent filing and any possible challenges to implementation. Because the change in our process could result in unanticipated complications, it would have to be done in a manner that carefully manages applicant expectations and USCIS resources. The working group is focused on evaluating the feasibility and benefits of the potential process change.

In the meantime, USCIS welcomes the continued input of the Ombudsman's Office and other stakeholders on the improvement of the waiver process.

3. Prioritize the finalization of its overseas case management system (currently in development) to provide for accurate statistical reporting of Forms I-601, allowing for: (1) posted processing times, and (2) tracking via the "My Case Status" feature on the USCIS website.

USCIS Response: USCIS agrees.

USCIS is pleased to report that the USCIS overseas case management system, which has been an Agency priority over the course of FY2010, was released for use by all International Operations staff on August 16, 2010.

The first release of the case management system, Case and Activity Management for International Operations (CAMINO), will allow USCIS to post accurate and comprehensive case processing times for Forms I-601 filed with overseas offices. USCIS plans to post actual processing times for overseas filing of Forms I-601 on USCIS's website by the end of the first quarter of FY2011. With the second release of CAMINO already in development, USCIS will expand the capabilities of the system so that applicants may access case status via the "My Case Status" feature on the USCIS website for Forms I-601 filed overseas.

Currently, many overseas USCIS offices manually post case-specific processing information on the local DOS website on a regular basis. DOS provides applicants with information on how to access and obtain the processing information on their cases. USCIS will work to expand this capability to all offices until CAMINO can be used to upload individual case processing information to the USCIS website in an automated fashion.

4. Publish clear filing instructions to guide customers in need of expedited Form I-601 processing.

USCIS Response: USCIS agrees.

USCIS is in the process of updating its International Operations Division's standard operating guidance on Form I-601 adjudications to address requests for expedited processing. In early

FY2011, USCIS plans to provide customers with specific information on the criteria used to expedite Form I-601 adjudications, the process for requesting expedited adjudication, and the type of evidence to be submitted. USCIS will publish the guidance in draft form first to invite stakeholder comment and input.

5. Improve coordination between DOS consular officers and USCIS adjudicators who work with Forms I-601 at CDJ.

USCIS Response: USCIS agrees.

USCIS agrees that DOS consular officers and USCIS adjudicators should maintain close coordination at CDJ and all other overseas posts. All USCIS overseas offices closely collaborate with their DOS colleagues. In CDJ, DOS consular officers and USCIS adjudicators discuss shared concerns every day. The USCIS CDJ Field Office Director and the Immigrant Visa Chief also maintain daily contact. This strong working relationship led to the innovative triage processing that allows the CDJ field office to expedite clearly approvable waiver requests.

The recommendation indicates that there is room for improvement in communicating to DOS the documentary needs that USCIS adjudicators may have with respect to some types of claims, in particular claims that present criminal convictions other than for crimes involving moral turpitude. While the form instructions direct applicants to submit court records in all cases, and the Foreign Affairs Manual (FAM) guides the consular officers to request and forward particular documents related to the relevant inadmissibility grounds, USCIS believes there is value in providing and inviting DOS to distribute a list of documents that USCIS typically needs from applicants. USCIS will discuss this approach with DOS.

6. Amend CDJ's office policy to allow USCIS employees to request digitized Alien Files (A-files) upon receipt of interview schedules.

USCIS Response: USCIS agrees in part.

USCIS agrees that A-file records (whether digitized or hard copy) should be requested early in the adjudication process and is evaluating procedures to achieve this goal without significantly delaying the process.

The number of cases at CDJ for which the applicant is found to have a pre-existing A-file is approximately 20 percent. Due to the limitations imposed by communications systems, overseas offices have limited access to digitized files, and receipt of disks containing a copy of the file can take approximately 9 to 10 work days to arrive at the post. This period does not include the time it takes to digitize a file that has not been digitized. Reviewing a digitized A-file in CDJ, even on disk, is significantly more time consuming than reviewing a hard-copy A-file and could delay the adjudication process and tax limited resource overseas. Therefore, requesting digitized A-files at the time an applicant is scheduled to file a Form I-601 could result in a significant delay in processing. USCIS will need to further explore the costs and benefits of prioritizing these cases for digitization as we continue the evaluation of our procedures.

The Ombudsman's report also raised the issue that applicants with A-files may be disadvantaged due to the adjudicator's delayed access to A-file information. USCIS has recently changed its procedures to address this issue. Rather than referring for remote adjudication any case awaiting A-file information, officers now conduct triage on a case as soon as the adjudicator has access to the A-file information. Under the prior process, the application awaiting A-file information went to the back of the line when it was sent for remote adjudication, and the applicant was deprived of the opportunity to benefit from the triage process. Under the new procedure, if the only reason for referring the case is the missing A-file information, an adjudicator retains the case for the triage process and reviews the case as soon as the A-file information is received. This change provides all applicants with the same opportunity to benefit from the triage process, regardless of whether the adjudicator has the A-file at the time the application is filed.

Technical Corrections

Finally, USCIS would respectfully like to correct an inaccuracy in the report regarding the percentage of unrepresented applicants whose Form I-601 applications are referred for further consideration rather than being approved during the "triage" process. The report states on page 13:

Pro se applicants comprise the majority of all waiver applicants filing at CDJ. USCIS estimates that these individuals file 81 percent of all waiver applications received at CDJ and nearly 82 percent of these pro se CDJ filings are referred.

Based on our conversations with the Ombudsman, we understand that this statement was an inadvertent mischaracterization of USCIS data. In response to a data request from the Ombudsman's Office, USCIS reported that 81 percent of all applicants filing Forms I-601 at CDJ are unrepresented and that 82 percent of applicants whose applications are referred for further consideration are unrepresented. These statistics do not mean, as implied in the statement in the report, that 82% of the pro se filings are referred. (The 1% difference between the percent of total applications filed pro se and the percent of referred cases filed pro se is not statistically meaningful.)

The USCIS data indicate that the percentage of pro se applicants whose cases are referred for further consideration is largely the same as the percentage of applicants who are represented, which is approximately 50 percent.