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# USCIS Response to the Citizenship and Immigration Services Ombudsman's (CISOMB) 2012 Annual Report to Congress

May 2, 2013



Homeland  
Security

*U.S. Citizenship and  
Immigration Services*

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# **Response to the Citizenship and Immigration Services Ombudsman's 2012 Annual Report to Congress**

**February 2013**

## **I. INTRODUCTION**

U.S. Citizenship and Immigration Services (USCIS) thanks the CIS Ombudsman (CISOMB) for the analysis provided in the 2012 Annual Report to Congress (Annual Report). The Annual Report highlights several previously issued formal recommendations by the CISOMB. Since USCIS has already provided detailed responses specifically addressing each of those recommendations, the Agency<sup>1</sup> will not include that information in this response.<sup>2</sup> Additionally, the Annual Report discusses a number of possible future recommendations contemplated by the CISOMB. USCIS will not comment on those possible future recommendations at this time. The Agency will review any formal recommendation once it is issued, and then provide a detailed response addressing that recommendation.

USCIS appreciates the review of the Agency's operations and procedures and provides the following response to the Annual Report.

## **II. EMPLOYMENT**

USCIS manages the process that allows thousands of individuals from other countries to work in the United States every year. USCIS recognizes the importance of employment-based immigration to employers, potential and existing employees, and the U.S. economy. Over the past reporting period, USCIS has dedicated substantial resources to improving the quality, integrity, and efficiency of the adjudicative process. The Agency is also committed to fostering innovative processes and solutions to further improve policies and practices related to immigrant investors, entrepreneurs, and workers.

### **A. VIBE**

The Validation Instrument for Business Enterprises (VIBE) is a Web-based tool designed to enhance accuracy, efficiency, and fraud detection in USCIS's adjudication of certain employment-based petitions. VIBE uses commercially available data from an independent information provider (IIP) to validate basic information about companies or organizations petitioning to employ certain alien workers. The current IIP for the VIBE program is Dun and Bradstreet (D&B). Since its implementation in February 2011, USCIS has taken

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<sup>1</sup> In this response, "USCIS" and "Agency" are used interchangeably.

<sup>2</sup> USCIS responses to CISOMB formal recommendations can be found on the USCIS website, available at: <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=bb2058a734cd9210VgnVCM100000082ca60aRCRD&vgnnextchannel=bb2058a734cd9210VgnVCM100000082ca60aRCRD>

several steps to improve its information and ensure it is utilized appropriately by Immigration Services Officers (ISOs).

### **1. VIBE-Feedback Mailbox**

Prior to the full implementation of VIBE, USCIS established an electronic mailbox, [VIBE-Feedback@dhs.gov](mailto:VIBE-Feedback@dhs.gov), where questions or concerns about any aspect of VIBE may be sent. Stakeholders have been encouraged to notify USCIS of inaccurate or burdensome Requests for Evidence (RFEs) issued due to information found in VIBE. The Service Center Operations Directorate (SCOPS) closely monitors messages sent to this mailbox.

### **2. System Enhancements**

Beginning in July 2011, enhancements were made to the VIBE system allowing SCOPS to enter comments concerning a petitioner's eligibility, as needed. These notes can be viewed by ISOs at any service center adjudicating any petition filed by the same company or organization. This feature will ensure greater consistency and prevent the issuance of duplicative RFEs for petitioners filing multiple employment-based petitions with USCIS. Future enhancements to this feature will allow SCOPS to more easily add and update comments in the VIBE system. Because information in VIBE is not a substitute for regulatory evidentiary requirements, petitioners must still submit all required evidence in support of the immigration benefit being sought.

### **3. New, Streamlined Process for Submitting Information Used in VIBE**

USCIS does not require that a petitioner seeking employment-based classifications create or update a record with D&B for its company or organization. However, U.S. companies and organizations may use D&B's iUpdate feature to create or update a record. There is no fee to check, update, or create a record for a petitioning company or organization with D&B.

During the process of creating, updating, or viewing their records, petitioners may encounter D&B representatives who recommend or suggest the purchase of their products and services.<sup>3</sup> In response to concerns raised about this direct marketing, USCIS has worked with D&B to develop a streamlined process for certain U.S.-based companies and organizations filing petitions with USCIS to allow them to create, update, and view their D&B record without being subjected to direct marketing. In December 2011, D&B began providing certain U.S.-based petitioners (and other U.S. government customers) a new online option that bypasses their marketing division. This new process can be accessed from a link provided on USCIS's VIBE webpage (located at [www.uscis.gov/VIBE](http://www.uscis.gov/VIBE)) or

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<sup>3</sup> USCIS does not endorse D&B or their products or services and does not suggest that petitioners purchase those products or services in order to ensure their information is complete. Additionally, USCIS does not endorse payment by petitioners of any fee to D&B, including fees to expedite the creation of a new record or to update an existing record with D&B.

directly at <http://fedgov.dnb.com/webform>.<sup>4</sup> When using this new process, customers should consider the following:

- D&B must verify the user's personal identity and affiliation with the selected company or organization. To do so, D&B uses commercially available identity matching technology to validate the information. This includes real-time individual challenge questions, which may contain personal information. For additional information about how D&B collects, manages, shares, and protects information, please review their privacy policy at [http://www.dnb.com/US/home/privacy\\_policy/index.html](http://www.dnb.com/US/home/privacy_policy/index.html)
- Once the user is validated and company updates are submitted through this process, the information provided by users is still subject to D&B's own validation process, including rigorous independent checks on all self-reported data, including start date, incorporation details, and company financial information.

With this new process, these petitioners are able to view their organization's most up-to-date D&B report without receiving direct marketing from D&B. This report contains all of the information that is shared by D&B with USCIS via the VIBE system.

#### **4. H-2A Outreach and New Optional Filing Checklist**

After receiving reports of some H-2A petitioners experiencing unexpected delays due to VIBE-related RFEs, USCIS conducted a thorough examination of this issue. In May 2011, USCIS closely reviewed approximately 20 H-2A petitions in which VIBE-related RFEs were issued (including several cases that were provided to USCIS by the CISOMB). The review found that many of these petitioners encountered delays due to:

- Improperly adding information about parties other than themselves in Part 1 of Form I-129, Petition for a Nonimmigrant Worker; and/or
- Providing incomplete information about the legal name and address of the business in the evidence of record for Form I-129.

Most of these petitions included very little supporting documentation, except for the required Temporary Labor Certification from the U.S. Department of Labor (Form ETA-9142) upon initial filing with USCIS.

Additionally, USCIS found that some of these petitioners had never properly or legally registered their business (specifically, the business name listed on the Form I-129) with the Secretary of State for the state in which the business was established. As a result, USCIS needed additional evidence from the petitioner to confirm the accuracy of the information provided.

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<sup>4</sup> This new process is available for U.S.-based, privately-held companies only. U.S.-based publicly-traded companies, government entities, and foreign companies wishing to create, update, or view their report with D&B must contact D&B at [www.dnb.com](http://www.dnb.com) and may still be subject to direct marketing from D&B.

Recognizing that delays in adjudications are especially burdensome for H-2A petitioners, who hire seasonal workers, USCIS suspended the use of VIBE for H-2A petitions from June 1 to July 18, 2011, to provide H-2A petitioners with additional information about how to properly file Form I-129. *H-2A Petitioners Questions and Answers*<sup>5</sup> and a preliminary *Optional Checklist for Petitioners Requesting H-2A Nonimmigrant Agricultural Workers*<sup>6</sup> were posted on the USCIS website. Additionally, USCIS hosted a stakeholder engagement on June 10, 2011, to discuss best filing practices for H-2A petitions in light of VIBE. During the engagement, USCIS offered clarification on how petitioners seeking H-2A classification should complete Form I-129. An executive summary, which is posted to the USCIS website, includes additional information about items discussed during the engagement.<sup>7</sup>

## **B. EB-5 Immigrant Investor Program**

USCIS shares the CISOMB's desire for prompt EB-5 adjudications and has worked to address this issue by significantly expanding EB-5 program staffing over the last two years. In addition to increasing adjudicator staffing, USCIS has added economists to the EB-5 team to assist adjudicators in evaluating regional center business plans and the associated economic analysis demonstrating job creation. While USCIS has taken these ameliorative measures, EB-5 petition receipts have continued to increase, presenting ongoing challenges to USCIS's efforts to reduce processing times for EB-5 cases. In the coming months, the hiring of additional personnel with relevant expertise will help improve EB-5 processing times; and as the new staff completes training, processing times will improve further. USCIS is committed to providing an EB-5 application process that is prompt and that protects the integrity of this important program.

It is important to note that USCIS took proactive steps to address the issue of giving deference to prior favorable decisions at the regional center application stage in adjudicating individual EB-5 petitions. On May 8, 2012, USCIS issued an operational memorandum focusing on this topic.<sup>8</sup> USCIS conducted round-table discussions with all EB-5 ISOs and supervisors as part of the implementation of this memorandum. These round-table discussions emphasized the importance of this topic and strategies that ISOs should employ when adjudicating EB-5 cases and in communicating deference issues to the petitioner or

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<sup>5</sup> See <http://www.uscis.gov/h-2a>

<sup>6</sup> In August 2011, USCIS replaced the preliminary version with the publication of Form M-797, Optional Checklist for Form I-129 H-2A Filings, available at:

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543fd1a/?vgnextoid=39d9618036c40310VgnVCM100000082ca60aRCRD&vgnnextchannel=889f0b89284a3210VgnVCM100000b92ca60aR CRD>

<sup>7</sup> See Executive Summary, USCIS Stakeholder Engagement: H-2A Agricultural Workers (Oct. 4, 2011), available at:

[http://www.uscis.gov/USCIS/Outreach/Notes%20from%20Previous%20Engagements/2011/June%202011/H2A\\_VIBE\\_exec\\_summ.pdf](http://www.uscis.gov/USCIS/Outreach/Notes%20from%20Previous%20Engagements/2011/June%202011/H2A_VIBE_exec_summ.pdf)

<sup>8</sup> See Guidance on EB-5 Adjudications Involving The Tenant-Occupancy Methodology (May 8, 2012), available at:

<http://www.uscis.gov/USCIS/Laws/Memoranda/2012/May/Tenant%20Occupancy%20Guidance%20-%20FINAL%205%208%2012%20pdf.pdf>

applicant should a case present the deference factors articulated in the operational memorandum.

### **C. Premium Processing**

USCIS originally anticipated making premium processing service available for Forms I-140 filed on behalf of multinational executives and managers during Fiscal Year (FY) 2012. SCOPS has been working closely with both the Nebraska and Texas Service Centers to prepare for acceptance of premium processing requests for this category. At present, implementation of premium processing service for this category has been delayed based on USCIS operational needs. USCIS maintains an intention to expand premium processing to this category as soon as it is operationally feasible.

## **III. HUMANITARIAN**

USCIS offers a number of humanitarian programs providing relief to individuals who become victims of crime or who are in need of aid or protection as a result of disasters, persecution, or other urgent circumstances. USCIS is committed to ensuring that these vulnerable populations have access to the various forms of immigration relief available to them.

### **A. T and U Nonimmigrant Status**

As of July 2012, applications for T nonimmigrant status are being adjudicated within the processing time goal of 4 months. Petitions for U nonimmigrant status are being adjudicated within 7 months, which is one month outside of the processing time goal. Because these cases are generally being adjudicated in a timely manner, USCIS does not believe that there is a need to provide an additional avenue for applicants/petitioners to obtain employment authorization. While USCIS does have processes which may be used to authorize employment during the pendency of an application/petition (e.g., administrative mechanisms such as parole, deferred action, or bona fides determinations), USCIS believes it is more efficient to adjudicate the entire Form I-914, Application for T Nonimmigrant Status, or Form I-918, Petition for U Nonimmigrant Status, and grant the T or U nonimmigrant status, which produces work authorization for the applicant/petitioner, rather than to assign the case twice in order to make a decision for an interim benefit.

### **B. Centralization of Filing and Adjudication of Form I-601**

On June 4, 2012, USCIS implemented the plan to centralize the filing of Form I-601, Application for Waiver of Grounds of Inadmissibility, and Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal, (in cases where applicants are required to file both forms) at a domestic USCIS Lockbox facility. The new process is in effect for all international filers. Centralization will provide significant humanitarian benefits for waiver applicants located abroad as they will see faster, more predictable and consistent processing times in waiver filing and adjudication. This change is part of a broader agency effort to transition to domestic filing and adjudication of applications where appropriate; it does not reflect a change in policy or eligibility criteria.

#### IV. CUSTOMER SERVICE

USCIS is dedicated to providing service that consistently meets the needs of its customers. USCIS continues to increase the types of “Service Requests,” or case inquiries that can be submitted online. The National Customer Service Center (NCSC) has expanded its hours of operation providing customers with greater opportunity to ask questions and receive assistance with their cases. If customers are placed on hold at Tier 2<sup>9</sup> and do not wish to wait to speak to an ISO, they will be provided an opportunity to submit their questions via e-mail.

Significantly, USCIS has enhanced the avenues for bringing decisional errors to the Agency’s attention. On March 23, 2012, USCIS issued an instructional memorandum establishing an expedited case review process for specifically defined decisional errors requiring corrective action.<sup>10</sup> Based on this memorandum, customers can contact the NCSC and request that an expedited Service Request be created if they believe USCIS made an administrative error that resulted in the improper denial of their case. The NCSC routes the Service Requests to an office based on the receipt number of the application or petition. Offices are to make every possible effort to review and respond to Administrative Error Service Requests within 5 business days. The majority of these requests are being processed within the target timeframe, and USCIS has seen improved processing each month.

Processing of Administrative Error Service Requests					
Month	Requests	Completed Within Target	Completed Outside Target	Pending Outside Target	Percentage of Timely Responses
April	450	336	101	13	74.7%
May	476	406	54	16	85.3%
June	423	370	47	6	87.5%

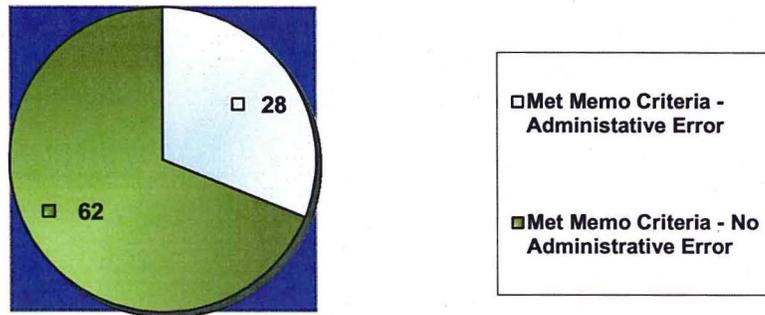
USCIS also analyzed a sampling of the Administrative Error Service Requests to determine the number of instances where a decision was, in fact, made in error. From March 23 to July 16, 2012, the National Benefits Center (NBC) received 90 Service Requests that met the threshold criteria for such a request. Of the 90, the NBC determined that 28 inquiries (31%) involved a decisional error specified by the policy memorandum. The NBC

<sup>9</sup> The NCSC is divided into two tiers. Tier 1 Call Centers are contractor-run organizations that operate from scripts provided by USCIS. Tier 1 representatives do not have access to USCIS systems (CLAIMS, CIS, etc.), although they do have the ability to initiate a Service Request through the Service Request Management Tool (SRMT). If Tier 1 is unable to address a concern, the call is routed to Tier 2. Tier 2 is staffed with ISOs who have access to most USCIS systems and can address individual concerns about the status of customers’ cases, specific questions about eligibility, and delivery of travel or employment documents.

<sup>10</sup> USCIS Instructional Memorandum, “Expedited Case Review Process for Specifically-Defined Administrative Errors” (March 23, 2012), available at: [http://www.uscis.gov/USCIS/Laws/Memoranda/2012/April/Correcting\\_Administrative\\_Error.pdf](http://www.uscis.gov/USCIS/Laws/Memoranda/2012/April/Correcting_Administrative_Error.pdf)

responded to all Administrative Error Service Requests within the requisite 5 business days.<sup>11</sup>

### Administrative Error Service Requests at the NBC



USCIS will continue to monitor and refine this process and evaluate whether any other types of decisions can and should be subject to expedited review.

## V. TRANSFORMATION

USCIS launched the first release (Release A1) of USCIS ELIS on May 22, 2012. This initial release contains many of the foundational elements needed for all form types and enables ISOs to review and adjudicate online filings from multiple agency locations across the country. With this launch, customers can apply online to extend or change their status (Form I-539, Application to Extend/Change Nonimmigrant Status) for certain nonimmigrant classifications. In addition, USCIS ELIS enables customers and their representatives to:

- Establish an online account, which will allow the applicant to file benefit requests from a single, customer-centric profile;
- Update account information online, including name or address change;
- Receive relevant tips for filling out their benefit request through an online assistant;
- Upload evidence electronically;
- Pay fees online;
- Update communication preferences to electronically receive notices from USCIS; and
- Respond to requests electronically.

<sup>11</sup> In some cases, the files were no longer at the NBC. So the initial response indicated the case was under review, which is in accordance with the March 23, 2012 instructional memorandum.

USCIS launched Release A2.1 on schedule on September 16, 2012. In addition to the above, this release permits USCIS employees to:

- Run additional background check rules;
- Filter work queues to show all active cases or only cases that are ready for review;
- Update fraud or system check risk records; and
- View time and date of risk assessment results.

Release A2.1 also enables customers to:

- Submit evidence, additional supporting documentation, or a response to a Notice of Intent to Deny (NOID) electronically under certain circumstances;
- Affirm the preparer attestation statement when preparing the case on behalf of another individual;
- Submit a withdrawal of the benefit request online after the customer files a Form I-539; and
- Submit a Form G-28, Notice of Entry of Appearance.

In accordance with the Office of Management and Budget's 25-point plan to improve information technology,<sup>12</sup> Transformation has continued its transition to an agile development methodology. Agile software development is based on iterative and incremental development, where requirements and solutions evolve through collaboration between self-organizing, cross-functional teams. Each iteration involves a team working through a full software development cycle, including planning, requirements analysis, design, coding, unit testing, and acceptance testing (when a working product is demonstrated to stakeholders). This minimizes overall risk and allows the project to adapt to changes quickly. Transformation has experienced initial success with these new agile methods and plans to release software approximately every four months based on agile development.

## **VI. CONCLUSION**

USCIS thanks the CISOMB for the analysis and evaluation provided in this year's Annual Report and looks forward to the recommendations that the CISOMB plans to issue in the months ahead.

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<sup>12</sup> See OMB website, 25 Point Implementation Plan to Reform Federal Information Technology Management (Dec. 9, 2010), available at: <https://cio.gov/wp-content/uploads/downloads/2012/09/25-Point-Implementation-Plan-to-Reform-Federal-IT.pdf>

## **VII. APPENDIX: ACRONYMS AND INITIALISMS**

<b>CISOMB</b>	Citizenship and Immigration Services Ombudsman
<b>D&amp;B</b>	Dun and Bradstreet
<b>DHS</b>	Department of Homeland Security
<b>ELIS</b>	Electronic Immigration System
<b>FY</b>	Fiscal Year
<b>IIP</b>	Independent Information Provider
<b>INS</b>	Immigration and Naturalization Service
<b>ISO</b>	Immigration Services Officer
<b>NBC</b>	National Benefits Center
<b>NCSC</b>	National Customer Service Center
<b>NOID</b>	Notice of Intent to Deny
<b>RFE</b>	Request for Evidence
<b>SCOPS</b>	Service Center Operations Directorate
<b>USCIS</b>	U.S. Citizenship and Immigration Services
<b>VIBE</b>	Validation Instrument for Business Enterprises