

AILA Issue Paper

AGENCY IN MELTDOWN: Major Problems Continue with INS Benefits Adjudications

THE ISSUE: Over the last five years, INS processing of applications and petitions for various immigration benefits, everything from temporary work visas to green cards and naturalization, has slowed to a crawl at almost all of the Immigration and Naturalization Service's (INS') processing locations, and backlogs of cases stretch into the millions. The effect of this meltdown is increasing uncertainty for immigrants, their U.S. relatives, and employers, as cases are held in limbo for months and years.

BACKGROUND: This situation has arisen due to a confluence of many factors, some of which are listed below:

- **Congressional Mandates:** In the last several years, Congress has passed many complex changes to immigration laws that have resulted in unreasonable mandates on the INS' already strained resources. Congress has implemented laws with unreasonably short implementation deadlines (such as a week to transition the fingerprint-taking function from private agencies to the INS), failed to adequately address funding issues commensurate with new mandates (such as filing increases from Central American relief legislation and H-1B increases), and revoked the agency's discretion in its handling of its caseload in many areas (such as requiring backlog reduction in naturalization at the expense of other adjudications).
- **Lack of Funding:** While the INS' budget has more than tripled since FY 1992, from \$1.4 billion to \$4.8 billion in FY2001, almost all of that increase has been for enforcement and border initiatives; very little has been designated to improve the processing and adjudication of applications. Currently, the INS enforcement budget is more than five times that for adjudications and naturalization. Under the INS' funding authorization, the filing fees paid by applicants and petitioners are supposed to pay for all adjudications functions. However, Congress has diverted a significant portion of these fees to other functions. In addition, under the INS' fee structure, the agency's budget estimates for future years are based on previous years' filings. Unforeseeable changes in receipts (often from changes in law) and new, unfunded mandates from Congress have helped create the severe budget shortfalls in recent years for the adjudications division (\$184 million for FY2000 alone). In addition, filing fees do not cover the costs of updating and maintaining computer, filing and other infrastructure systems, nor do they cover necessary overtime for backlog reduction. During the campaign, President Bush suggested that the INS needed \$500 million over five years to clear out the backlog. While a good start, past experience indicates that it may take more than that to eliminate the backlogs.
- **Increase in Filings:** In the last seven years, the number of filings in all categories (family, employment, asylum, naturalization) has increased dramatically. In addition, due to changes in the qualification requirements in many immigration categories, and

the changing nature of employment, the complexity of these filings also has increased dramatically. Filings thus take longer to evaluate properly, thereby adding to the backlogs. Finally, the agency will also experience increases in filings from the Legal Immigration and Family Equity Act ("LIFE"), since INS estimates that approximately one million people might qualify for benefits under that Act, but three times that many may apply.

- INS Policies that Exacerbate the Problems: In the last several years, INS policy decisions and failure to change outdated policies have exacerbated backlogs in adjudicating petitions and applications by requiring additional, unnecessary filings. For example, INS requires applicants for green cards to apply for separate travel permission, instead of allowing them to travel on their current, valid visas. INS also issues documents, such as travel permission and work authorization documents, with very limited validity periods, thus adding more filings to its workload.
- Continuing Technology Problems: Although INS has made significant progress in attempting to utilize technology to help with its processing problems, every technological advance seems to come at a cost. Persistent bugs, computer systems that do not meet the needs of the processing centers or are put into exclusive operation with minimal field testing, problems with automated scheduling software, coordination of systems between the various INS locations, and long delays in fixing these problems, all contribute to increased processing times and backlogs when any particular system "crashes." In addition, many of the agency's computer systems are obsolete, and INS does not have funding to invest in new replacement systems.

The 106th Congress passed the Immigration Services and Infrastructure Improvements Act (Title II of P.L. 106-313), which included a provision that the INS should complete processing of benefit applications within 180 days of receipt (30 days for nonimmigrant petitions). The Act also authorized, but did not fund, a new Immigration Services and Infrastructure Improvement Account for the INS to which Congress could appropriate funds for backlog reduction and improvements in application and petition processing. The Act also mandates that the INS create a backlog elimination plan and present this plan to Congress, along with reports of its pending workload. However, the agency often does not meet Congressional reporting deadlines. In addition, the FY 2001 INS budget authorized the agency to offer "premium processing" to certain business applications for a \$1000 fee. INS intends to use part of this additional funding to address backlogs. However, this fee is no substitute for appropriations. Recent changes in the law may decrease the demand for such "premium processing" and leave the agency less likely to earn enough funds through this program to make any real changes. The agency will also experience increases in filings from the Legal Immigration and Family Equity Act ("LIFE"), which will increase, not reduce the backlog. Finally, immigration advocates worry that resources allocated to this business program could negatively affect all other INS processing, including non-expedited business and family cases.

CURRENT STATUS: Due to the factors noted above, backlogs have increased and cases are processed inconsistently at the four regional service centers and at local offices. This

inconsistency results in disparate treatment, depending on the petitioner's geographic location. Furthermore, long delays have resulted in failure to receive a benefit. For example, petitions for family members routinely can take over a year in some locations (over 1000 days at the Texas Service Center), and even petitions for nonimmigrant (temporary visas) can take several months, during which time a minor child may "age out" of eligibility, or a company may change plans.

AILA's POSITION: AILA believes there are solutions to the problems noted above. However, first and foremost, Congress should demonstrate its support for the adjudications function of INS by:

1. Appropriating adequate funding for adjudications, so that, together with user fees, both sources will support the agency's workload. AILA does not believe in funding backlog reduction by fee increases, which may serve as a deterrent to immigrants and employers. Voluntary programs, such as premium processing, must be evaluated in light of its impact on INS' overall workload and ability to process other petitions and applications. If the program does not produce funding for infrastructure or causes further delays in processing other cases, it should be reevaluated. In any case, such voluntary programs cannot substitute for direct Congressional appropriations.
2. Stressing the importance of the timely provision of immigrant services when debating any new immigration legislation. AILA believes INS should be held to statutory deadlines for processing.
3. Including reasonable deadlines in implementing new laws. AILA believes Congress should allow the agency enough time to implement new laws in the most efficient and appropriate way.

By placing equal emphasis on INS adjudications as is placed on enforcement, the two sides of U.S. immigration policy can be well served.

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