

INS REORGANIZATION

THE ISSUE: The Immigration and Naturalization Service (INS) both enforces immigration laws and adjudicates applications for nonimmigrants and immigrants. The agency's dual mission of both enforcing the law and providing services has resulted in an inconsistent record in both areas. INS has been justifiably criticized for not providing timely and consistent service for applicants, and for not developing a consistent and effective system for enforcing our immigration laws. However, Congress must also take responsibility for the unfunded, complicated and often-conflicting mandates it places on the agency. The INS has tremendous adjudications and naturalization backlogs, and does not consistently and professionally enforce immigration laws. Nearly everyone who deals with the INS agrees it should be reformed. The question is how to do that, while allowing the agency to operate successfully.

BACKGROUND: Since 1990, when the Commission on Immigration Reform recommended breaking up the INS, several reorganization proposals have been introduced in Congress. The efforts that have gained the most support and have the most credibility are those that have focused on the need to separate, but coordinate, the enforcement side and the service side of INS, put someone in charge (a high-level person responsible for developing and implementing a uniform immigration policy), and provide adequate funding for adjudications. In the 106th Congress, Senators Spencer Abraham (R-MI), Edward Kennedy (D-MA) and others introduced a bill (S. 1563) that would have created an Immigration Affairs Agency within the Department of Justice headed by an Associate Attorney General for Immigration Affairs. The plan separated the agency into an Immigration Services and Adjudication Bureau and a Bureau of Enforcement and Border Affairs, provided for coordination and support between the bureaus, and mandated that user fees support adjudication functions. The plan also established accountability within both the adjudications and enforcement agencies. S.1563 had bipartisan support, and during his campaign, President Bush announced that he favored this plan over other plans introduced in Congress. Such plans included H.R. 3918, introduced by Rep Hal Rodger (R-KY), Lamar Smith (R-TX), and Sylvestre Reyes (D- TX), that did not provide for a single person in charge, included no coordination between the two functions, and was silent on funding.

Several bills most likely will be introduced in the 107th Congress that will propose different ways to reorganize the INS. The Bush Administration also is expected to take an active role in INS reorganization. The Administration's FY 2002 budget proposal includes \$100 million dollars (of which \$45 million annually is additional appropriations) in each of the next five fiscal years for INS backlog reductions, and describes in very general terms the President's vision of INS reorganization. However, this additional funding does not appear adequate to reduce the long backlogs. Additional federal appropriations are necessary to adequately deal with the long lines and waits that individuals and employers now face.

AILA'S POSITION: AILA supports a reorganization of the INS that reflects the following principles:

- **Put Someone in Charge and Give that Person Clout:**

The Federal government needs to have one full-time, high-level person in charge of the nation's immigration functions. Such authority vested in one person would improve accountability by fully integrating policy making with policy implementation, ensure direct access to high-level officials within the executive branch, and attract top-flight managerial talent. The new agency's local functions should be split, but the new agency's national leadership should not be.

- **Separate, but Coordinate, the Enforcement and Adjudication Functions:**

At the local level, district offices should be dismantled, separate immigrant adjudication areas and enforcement sectors should be created, and separate chains of command and career tracks should be established. This will lead to more clarity of mission and greater accountability from top to bottom within the two distinct functions that, in turn, will lead to more efficient adjudications and more accountable enforcement.

At the same time, any reorganization needs to require coordination between the two functions to ensure the efficient and consistent implementation of a unified immigration policy. Dividing local adjudication and enforcement operations will benefit both, but cost efficiencies and necessary coordination are best served by a set of discrete shared functions. The most important of these is the need for shared information systems. For example, personnel should be able to access the same databases so that an adjudication officer doesn't approve an application for someone who has an outstanding order for deportation, or a deportation officer remove someone who is applying for political asylum.

- **The Adjudication Function Needs to be Adequately Resourced:**

High fees, long backlogs, and a pattern and practice of unresponsive and rude service plague the adjudication function of the INS. In addition, Congressional appropriations support enforcement activities, while user fees fund all INS adjudications. Any reorganization needs to ensure that adequate congressional appropriations are made available to support adjudications, to improve customer service, and offset the costs of those adjudications for which no fee is charged or from which funds are diverted.

The INS premium-processing program is no substitute for direct Congressional appropriations to supplement user fees. It simply is a program to get large business to underwrite additional resources for other functions. It provides INS with a powerful incentive to keep non-premium processing at

poor levels to generate demand for the premium-processing program.

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