



Escalating Cases with USCIS and DHS

Obstacles and Possible Solutions

By Peggy Gleason

In the past three years, USCIS has slowed down its processing of applications for immigration benefits and created a series of new roadblocks to success for applicants. Escalation of case problems and systemic issues is more important than ever, yet the access to USCIS has constricted under the current administration. This practice advisory will review some of the current obstacles and describe the channels that exist to resolve case problems.¹ There are still avenues practitioners can pursue to attempt correction of processing problems, mailing issues, administrative errors, and clear legal errors, as well as offices which have responsibility to review systemic problems with USCIS and its parent agency, the Department of Homeland Security (DHS).

I. Current Landscape

A. Customers No More – And No Customer Service

Words matter. On February 22, 2018, then USCIS Director Cissna announced a material change in the USCIS' mission: He removed a sentence which stated that USCIS' goal was to "secure America's promise as a nation of immigrants by providing accurate and useful information to customers, granting immigration and citizenship benefits, promoting awareness and understanding of citizenship..." with a new goal, which pointedly omitted any reference to customers, a nation of immigrants, education or understanding, and states that USCIS, "administers the nation's lawful immigration system, safeguarding its integrity... by efficiently and fairly adjudicating requests for immigration benefits while protecting Americans, securing the homeland..."² The change in mission reflects a transformation from an agency that serves immigrants to one that serves to protect Americans, emphasizing law enforcement as an over-arching goal.

The 2017 reorganization of USCIS headquarters reflected this change in focus away from customers and customer service as well. One of the six divisions of USCIS since 2010, the Customer Services and Public Engagement Directorate was re-named the Office of Citizenship and Applicant Information Services and was demoted within the agency. It was

¹ The advocacy steps described in this advisory are collateral attacks on USCIS errors or processing problems and are not a substitute for an administrative appeal or motion to reopen of a USCIS decision. Appeals and motions of a final USCIS decision should be filed within the time allotted (usually 30 days) if one is available because an applicant who misses the deadline loses the opportunity to present a direct challenge to an agency decision. Exhausting administrative remedies is also a prerequisite for many kinds of court challenges of agency actions.

² USCIS, *USCIS Director Cissna on New Agency Mission Statement*, (Feb. 28, 2018), available at <https://www.uscis.gov/news/news-releases/uscis-director-l-francis-cissna-new-agency-mission-statement>.

placed under a newly named External Affairs Directorate.³ Genuine engagement with the public has decreased under this administration, both at the headquarters level and in local USCIS offices.

Beginning in March 2018, USCIS established a new system to control public access to USCIS offices called Information Services Modernization Program. This replaces InfoPass, a system which allowed individuals and attorneys to self-schedule an appointment with a local office. USCIS' InfoPass had kiosks in local USCIS offices for self-scheduling online and allowed walk-ins for emergencies or urgent matters such as motions to reopen and fee payment for immigration court cases. Under the new system, which will be in place throughout the country by September 2019, the only way to schedule an appointment with USCIS is by contacting a national call center and going through several levels of USCIS employees, after which the USCIS employee decides whether an appointment will be granted.⁴ The call back system is fraught with problems, and attorneys report that they are not able to enter USCIS local offices without an appointment even in an emergency such as paying a fee for an application in immigration court or filing a motion to reopen by the deadline.⁵ The overall emphasis of these changes is away from in-person contact between the public and USCIS, favoring online inquiries and services that require computer access.

Other changes have restricted customer service. USCIS Service Centers are enormous regional filing receipt centers where most applications are initially filed and reviewed. In January, 2019, the California Service Center, Nebraska Service Center, Potomac Service Center, Texas Service Center, and Vermont Service Center all discontinued dedicated email addresses that they had maintained for individuals to contact them on specific case questions.⁶ There is no public access to these service centers in person as no interviews are conducted there, and no appointments can be scheduled.

In other areas, USCIS is cutting back services. In March 2019, USCIS announced the elimination of the International Operations office at USCIS, which has responsibilities overseas and in the United States for adoption services, military family immigration, lawful permanent resident travel from abroad to the United States, refugee processing support, and humanitarian parole, among other functions.⁷ While USCIS claims that these functions will likely be handled by the Department of State, no details have emerged about such an arrangement. Current staff in this office are scrambling for jobs elsewhere.

The ongoing shift away from customers and customer service is reflected in changes to the agency services described in the USCIS policy manual, as well. On May 10, 2019, USCIS eliminated the word “customer” from the chapter that covers service delivery by the agency.⁸ Customer is replaced with applicant or representative. The revised service methods described in the policy manual emphasize online contact with USCIS and referral through the renamed USCIS Contact Center, which also had “customer” struck from its former name, the National Customer Service Center.⁹

³ AILA, “USCIS HQ-AILA Liaison Meeting,” (April 6, 2017), AILA Doc. No. 17050302, available at <https://www.aila.org/>.

⁴ USCIS, *USCIS To Expand Information Services Modernization Program to Key Locations*, (Oct. 30, 2018), available at <https://www.uscis.gov/news/news-releases/uscis-expand-information-services-modernization-program-key-locations>. This announcement described the end of self-scheduling for appointments at USCIS, and the implementation of a centralized call-in system where the USCIS decides whether an appointment will be given at a local office. USCIS stated, “Early results indicate that the Information Services Modernization Program provides essential assistance while saving the public time and effort.” However, attorneys report severe problems with the system ranging from failure of call-back systems to lack of comprehension of the legal problem presented by USCIS employees answering these queries.

⁵ USCIS handles the fees that must be paid for applications that are considered in Immigration Court, and strict deadlines apply to payment of such fees and the filing of motions to reopen. For more information on current experience with the new system see AILA, “*Practice Alert: Member Feedback on USCIS’s InfoMod*,” (June 13, 2019), AILA Doc. 19040808, available at <https://www.aila.org/>.

⁶ USCIS, *Update on Case Assistance by Service Centers*, (Dec. 21, 2018), available at <https://www.uscis.gov/news/alerts/update-case-assistance-service-centers>.

⁷ Miriam Jordan, *Trump Administration Plans to Close Key Immigration Operations Abroad*, N.Y. Times, Mar. 12, 2019, available at <https://www.nytimes.com/2019/03/12/us/united-states-citizenship-immigration-uscis.html>.

⁸ USCIS, *Policy Alert on Changes to Volume 1: General Policies and Procedures*, (Policy Manual), (May 10, 2019), available at <https://www.uscis.gov/sites/default/files/policymanual/updates/20190510-PublicServices.pdf>.

⁹ USCIS, *Policy Alert, USCIS Public Services*, (May 10, 2019), available at <https://www.uscis.gov/sites/default/files/policymanual/updates/20190510-PublicServices.pdf>.

USCIS has slowed down the adjudication of cases. The slowdown has happened together with administrative changes such as requiring more in-person interviews for application types that could previously be approved based on documentation¹⁰ and performing continuous background checks through the entire application period (called Continuous Immigration Vetting) where previously such checks were performed at defined points of time in the application process.¹¹ The processing times for petitions and applications are published on the USCIS web site. They have increased, with the overall average case processing time surging by 46 percent over the past two fiscal years and by 91 percent since fiscal year 2014. In a study on delays, analysis of USCIS data showed that USCIS processed 94 percent of its form types—from green cards for family members to visas for human trafficking victims to petitions for immigrant workers—more slowly in fiscal year 2018 than in fiscal year 2014. Case processing times increased substantially in 2018 even as case receipt volume declined.¹² Naturalization adjudications can take two years or more at USCIS offices in New York, Dallas, and Miami, for example, where just a few years ago, six months was typical processing time.¹³

Further discouraging service to immigrants who apply for immigration benefits are new policies which give USCIS adjudicators full discretion to deny applications without a request for evidence (RFE), thus disallowing applicants an opportunity to correct discrepancies or deficiencies in a filing,¹⁴ and the 2018 changes increasing the issuance of Notices to Appear for applicants denied a benefit, commencing removal proceedings against them.¹⁵

B. How to Escalate USCIS Cases and Raise Systemic Issues

The dismal situation with USCIS processing requires advocates to use every channel available to fight for a just outcome. There are offices within the government that can help applicants or representatives to pursue a USCIS case that is mishandled, delayed, lost, or decided in error or to report a systemic problem at DHS. It's important to research as much as possible about a case history to be effective in advocacy. It's always advisable in pursuing an individual case that has gone awry to file a Freedom of Information Act request to obtain a copy of the file.¹⁶

1. Constituent Services

One of the few communication channels with government on immigration cases that has not changed radically with the current administration are the United States congressional and senate constituent services. This avenue of redress can be used to try to solve administrative or processing problems for individual cases with USCIS, as well to correct clear legal errors. To contact the appropriate staffer for constituent services, look at the federal directory for their web site. These can be found at:

<https://www.house.gov/representatives> and <https://www.senate.gov/senators/index.htm>

¹⁰ All employment-based I-485 adjustment applications now require in-person interviews, as do applications by family of approved asylees who seek to reunify (I-730s). USCIS New Release, *USCIS To Expand In-Person Interview Requirements for Certain Permanent Residency Applicants*, (Aug. 28, 2017), available at <https://www.uscis.gov/news/news-releases/uscis-to-expand-in-person-interview-requirements-for-certain-permanent-residency-applicants>.

¹¹ DHS, *Privacy Impact Assessment for Continuous Immigration Vetting*, (Feb. 2019), available at <https://www.dhs.gov/publication/dhsuscispia-076-continuous-immigration-vetting>.

¹² AILA, "Policy Brief: USCIS Processing Delays Have Reached Crisis Levels Under the Trump Administration," (Jan. 30, 2019), AILA Doc. 1902834, available at <https://www.aila.org/>; Maggie Murphy, *Slow Immigration Times Draw Criticism and Questions*, *The National Law Review*, (Feb. 19, 2019).

¹³ USCIS Case processing times, <https://egov.uscis.gov/processing-times/>, (accessed June 24, 2019).

¹⁴ USCIS, *USCIS Updates Policy Guidance for certain Requests for Evidence and Notices of Intent to Deny*, (July 13, 2018), available at <https://www.uscis.gov/news/news-releases/uscis-updates-policy-guidance-certain-requests-evidence-and-notices-intent-deny>.

¹⁵ USCIS Policy Memorandum, PM-602-0050.1: *Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens*, (June 28, 2018), available at <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-06-28-PM-602-0050.1-Guidance-for-Referral-of-Cases-and-Issuance-of-NTA.pdf>.

¹⁶ Instructions on how to file a FOIA at USCIS can be found at <https://www.uscis.gov/about-us/freedom-information-and-privacy-act-foia/uscis-freedom-information-act-and-privacy-act>. Also see for additional information ILRC, Practice Advisory, *A Step by Step Guide to Completing FOIA Requests with DHS*, (Nov. 2017), available at https://www.ilrc.org/sites/default/files/resources/foiaa-step_by_step-20171117.pdf.

Most offices will do intake for these types of constituent services by email communication accompanied by the relevant scanned documents. Look first for the contact at the local office of the representative or senator to raise the inquiry in the district or field office contacts. If the issue cannot be resolved locally, contact the Washington, D.C. office of the representative or senator and follow their process for submitting an inquiry. Expertise at the local and national levels can differ, as well as the contacts that those offices have with USCIS liaison. If in doubt where a matter should be best filed, call the office and ask the staff what they advise.

When looking at the representative or senator's webpage, follow the heading for contact which will usually link you to several topics including services or constituent services. From there, there will usually be links to help with a federal agency where various agencies are listed, including USCIS. For immigration matters, the immigrant (either petitioner or beneficiary) needs to sign a DHS authorization form for privacy release if a representative is filing the inquiry. There is also an inquiry form which asks for identifying data and a summary of the problem at issue.

Give a summary of the issue and include the essential data for an effective inquiry with the agency. This includes full names of petitioners and beneficiaries, A numbers, if any, dates of birth, receipt numbers, date of receipt, the type of petition filed, and a copy of any documents that illustrate the problem presented. The short summary of the case in the form should clearly state the problem and the solution sought with USCIS. If there is an emergency, headline the urgency and request an expedite in the case summary. Explain the reason for the expedite, such as a loss of eligibility or a medical crisis and include supporting documentation.

Staffers in these offices who perform constituent services vary from novices to those with decades of experience in immigration law. If the legal problem is not clearly stated from the submission, one cannot count on the problem being revised with the needed information before it is presented to USCIS. States with larger immigrant populations tend to have more staff with more experience in this area, but all representatives and senators handle these requests routinely.

The advantage of congressional and senate inquiries to USCIS is that they are given a priority in reply, and USCIS has dedicated congressional liaison staff who handle them. USCIS headquarters has an Office of Legislative and Intergovernmental Affairs with staff from the Congressional Constituent Services division throughout the local offices and service centers.

Examples of USCIS inquiries that can be handled by constituent services include delays in processing, lost files, clear legal error, misclassified petitions, failure to notify applicants, and delays in scheduling interviews or oath ceremonies.

Policy matters or systemic problems can be raised to legislative offices, as well, although a letter to the member directing it to legislative counsel is a better approach than a constituent services form. If there is a high profile case or policy issue that requires attention, consider contacting particular committees, such as the House Committee on Government Oversight and Reform <https://oversight.house.gov/>, which researches and holds hearings on a wide variety of DHS systemic problems related to the agency not fulfilling its statutory mission, or the House Judiciary Committee, Subcommittee on Border Security and Immigration, which covers USCIS functions <https://judiciary.house.gov/>.

2. The Citizenship and Immigration Services Ombudsman

In 2002, Congress created an independent office within DHS to assist individuals and their employers who have difficulty resolving their cases with USCIS. The office has approximately thirty employees engaged in taking case inquiries from people whose applications have gone awry at USCIS. The staff at the Ombudsman's office research the law and process at USCIS, and approach USCIS on resolutions. The ombudsman staff can handle matters involving case delays beyond processing times, administrative errors such as typographic errors in documents, lack of appointment notices, lost files or transfer of files problems, change of address and mailing issues, improper rejections of applications filed at USCIS, and ongoing, systemic issues that require a higher level of review such as misapplication of evidentiary standards, clear

errors of fact or law in USCIS decision, and refunds where USCIS has made a clear error and has charged a fee to reopen or appeal.

To initiate a case inquiry with the CIS Ombudsman to USCIS, complete a one-page electronic DHS form 7001.¹⁷ The form may also be mailed by postal service, but electronic submission is the most efficient method of filing.

Before filing with the Ombudsman, it is important to exhaust customer service tools directly with USCIS, such as checking case status online at the USCIS website, calling the USCIS contact Center at 1-800-375-5283, scheduling an appointment with USCIS, and making an e-request to USCIS. When filing the form 7001 with the Ombudsman, recite the details of the attempts made to resolve the problem with USCIS and the lack of successful results. The Ombudsman is an office of last resort and is not supposed to substitute for customer service that USCIS should provide.

The 7001 form asks for basic information to identify the case with USCIS, including the identity and address of the filer, A number if any, and application or petition information such as receipt number for the form. The form provides a blank section for a case description, where the filer should state the issue in a paragraph. Up to ten attachments (up to 5 megabytes in size) can be submitted with the 7001, and documents can be faxed or emailed separately to the office for attachment to the file. A G-28 entry of appearance should be included for legal representatives. The basic documentation for case inquiries should include a receipt for the application filed with USCIS, and any relevant notices of decision by the agency. Briefs that explain complex legal issues presented to USCIS can also be attached. The office is currently understaffed, thus processing times for non-urgent cases can run six months to a year.

Expedite cases are handled first. If an inquiry is time-sensitive, a request for an expedite should be included in the beginning of the case description, and documentation should be attached to support it. The Ombudsman applies the same expedite criteria as USCIS, which include severe financial loss, urgent humanitarian reasons, compelling U.S. government interests, or clear USCIS error. The Ombudsman's website includes a section on filing tips.¹⁸

3. USCIS – Contact on Case Problems

Introduced in stages since March 2018, USCIS established an Information Modernization program that will entirely replace the current InfoPass program by fall of 2019. USCIS is now directing all case inquiries through a centralized call center, the USCIS Contact center, at 1-800-375-5283. This centralized case information system replaces the former InfoPass system where individuals could self-schedule an appointment with their local USCIS office.

The call center can provide general information at “Tier 1”¹⁹ when first responding, and the caller can request an appointment at a local USCIS. Appointments at USCIS are deemed appropriate for matters such as advance parole, I-551 ADIT stamps,²⁰ DACA, parole in place, or proof of status. The call will be forwarded to “Tier 2” if it cannot be resolved and the caller enters a call back number. A caller can ask to speak to a supervisor at any time.

USCIS promotes the centralized system as an improvement in service. Feedback by attorneys who use the new system is not favorable. While call backs are supposed to happen within a 48-72-hour time period, they are often outside this window. The calls are received outside of business hours in the evening, early mornings, and on weekends. Sometimes

¹⁷ The Ombudsman inquiry form 7001 can be found at <https://www.dhs.gov/topic/cis-ombudsman/forms/7001>.

¹⁸ The Ombudsman website has detailed instructions on how to complete the 7001 and the steps to take prior to filing the inquiry. https://www.dhs.gov/sites/default/files/publications/requirements-and-tips-on-filing-a-case-submission-request_O_0.pdf.

¹⁹ Tier 1 is the initial answering service for the USCIS call center, in which USCIS employees provide basic information recited from scripts about immigration benefits. After exhausting Tier 1, the caller can eventually advance to Tier 2, which is answered by USCIS employees with more knowledge and ability to answer more questions.

²⁰ I-551 ADIT stamp is a stamp in an immigrant's passport that is needed as temporary proof of permanent residence, typically because an immigrant needs to travel but has not yet received the permanent residence card from USCIS.

the client is called back directly instead of the attorney who placed the initial request.²¹ The delay in scheduling appointments is critical for attorneys trying to file time-sensitive matters or attempting to pay fees on a motion. The local USCIS offices are mandated to use the centralized system and will not permit any walk-in matters, even for attorneys or those with urgent matters.²²

Attorneys also report that they have difficulty convincing the call center personnel that an appointment is necessary for feeing in motions or applications for the Immigration Court, for obtaining an I-94 card for asylum applicants granted in immigration court, or for obtaining an I-551 ADIT stamp as proof of permanent residence.²³

4. DHS Office of Civil Rights and Civil Liberties - Compliance

The Office of Civil Rights and Civil Liberties (CRCL) is a separate office with more than 100 employees that has oversight responsibilities for DHS components. One of its functions is to take complaints in its compliance branch from persons who experience a civil rights violation by USCIS, Customs and Border Protection (CBP), or Immigration and Customs Enforcement (ICE).²⁴ Civil rights violations are broadly defined and can include poor conditions in detention, discrimination by CBP at ports of entry, failure to comply with VAWA privacy restrictions by USCIS, officer misconduct or use of force by CBP or ICE, and oversight of 287(g) contracts. CRCL inspects ICE detention sites, and sometimes inspects CBP holding facilities, as well. Detention standards for ICE facilities differ depending on who operates the location, but the most widely applicable performance based national detention standards can be reviewed on the ICE website.²⁵ CBP also has detention guidelines.²⁶ CRCL's scheduling of inspections is generally determined by the receipt of high numbers of complaints citing violations of standards for a detention site.

Much of the work done by CRCL is internal to DHS and is not released to the public. However, complaints can help increase scrutiny on DHS components for systemic problems by prompting CRCL to investigate. Part of CRCL's responsibility is to oversee DHS compliance with Section 504 of the Rehabilitation Act of 1973, thus any problems with USCIS, ICE, or CBP not providing reasonable accommodations should be raised to CRCL, as well.

5. DHS Office of Inspector General

The DHS Inspector General is another office responsible for investigating systemic problems in USCIS, ICE or CBP operations that involve fraud, waste and abuse in services, civil rights violations, profiling, use of force, conditions in detention, or employee misconduct. Anyone can report an allegation to the Inspector General using an online form.²⁷ Allegations can be kept confidential if the filer indicates a desire for anonymity on the online form. Supporting documents can be attached.

The Inspector General performs dozens of investigations and audits each year and produces voluminous reports.²⁸ CBP and ICE are frequently the subject of investigations and audits. The Inspector General performs unannounced inspections of detention facilities when reports warrant a visit without giving the facility time to prepare for inspectors. Recent reports have covered subjects such as overcrowding at El Paso Del Norte Processing Center, hiring practices by CBP, CBP's

²¹ AILA, "Practice Alert: Member Feedback on USCIS's InfoMod," (June 13, 2019), AILA Doc. 19040808, available at <https://www.aila.org/>.

²² AILA, Washington DC Chapter Distribution List, "RE: WAS InfoPass Modernization effective June 24, 2019," describes in a June 26, 2019 communication that attorneys cannot access the USCIS office in Fairfax, Virginia even to pay a fee on time for a motion to reopen if they do not have an appointment scheduled through the central contact center.

²³ AILA, "Practice Alert: Member Feedback on USCIS's InfoMod," (June 13, 2019), AILA Doc. 19040808, available at <https://www.aila.org/>.

²⁴ The CRCL complaint form can be found at <https://www.dhs.gov/file-civil-rights-complaint>.

²⁵ See ICE's Performance Based National Detention Standards at <https://www.ice.gov/detention-standards/2011>.

²⁶ See CBP's National Standards on Transport, Escort, Detention and Search, available at <https://www.cbp.gov/document/directives/cbp-national-standards-transport-escort-detention-and-search>.

²⁷ The DHS Inspector General allegation form is found at <https://hotline.oig.dhs.gov/#step-1>.

²⁸ All the publications of the Inspector General are found at <https://www.oig.dhs.gov/reports/audits-inspections-and-evaluations>.

searches of electronic devices at ports of entry, alarming conditions at ICE’s Adelanto processing center, insufficient DHS procedures to address employee misconduct, USCIS’ medical admissibility screening process, and ICE’s training programs. Filing allegation forms with accompanying documentation to the Inspector General can call attention to a systemic problem at USCIS, CBP, or ICE and result in scrutiny that may correct the problem.

II. Conclusion

Use any and all avenues available when trying to challenge USCIS errors. The elevation of a case problem via the channels described can sometimes push USCIS to resolve matters that the agency had thus far ignored. Systemic problems at DHS can also be headlined by reporting to the responsible oversight agencies. For individual case problems at USCIS, exhausting administrative remedies is always a good idea for zealous advocacy, but also because a showing that such exhaustion has taken place will be needed if a problem persists and eventual action in federal court is pursued.



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