

Mobility: immigration alert

July 2021

United States

The 2021 Annual Report of the USCIS Ombudsman (Please see full report [here](#))

Executive summary

By statute, the Office of the Citizenship and Immigration Services Ombudsman (CIS Ombudsman) submits an Annual Report to Congress by June 30 analyzing key systemic issues encountered by individuals and employers applying for immigration benefits with U.S. Citizenship and Immigration Services (USCIS). The 2021 Annual Report ("The Report") recounts the impact of the COVID-19 pandemic on USCIS' operations and financial condition and key goals of expanding electronic capabilities, increasing outreach and intra-agency coordination, in order to address challenges and ongoing systemic issues. The focus of this analysis is the role of COVID-19 in compounding the already significant USCIS backlogs, delays, and resultant strained financial situation confirming backlogged cases "at record levels." (The Report, Pg. 11).

Background

Backlogs and processing delays are historically embedded with the USCIS immigration benefit application process. In the pre-COVID world of 2019, the growth of cases outside of stated processing times was so significant that a Congressional hearing was held to address the backlog (See: "Policy Changes and Processing Delays at U.S. Citizenship and Immigration Services," before the Subcommittee on Immigration and Citizenship of the U.S. House of Representatives Committee on the Judiciary, 116th Cong. 1st Sess. (16 July 2019)). With nominal progress made in the interim, the Report further confirms that "the COVID-19 pandemic created unprecedented challenges requiring closures of offices that normally depend on face-to-face interaction, increased backlogs in

virtually all form types, and a reduction in fee revenue, which thrust the agency into a state of fiscal panic" (The Report, Pg. 6).

The confluence of factors pre-existing the onset of COVID-19; adjudication backlogs, logistical processing delays, bureaucratic barriers, and revenues insufficient to cover operating costs; by March 2020, nearly triggered an agency-wide closure. The Report details a non-exhaustive list of key hurdles preventing the Agency from gaining solid ground -- closures preventing in-person appointments and services (person interviews, biometrics appointments, and oath ceremonies); shifting priority date currency at the new fiscal year; insufficient technology and infrastructure; reductions in staffing and funding; a failed fee rule; threats of furlough (twice); the list continues.

In practice, this means that significant processing delays and backlogs continue to complicate access to immigration-related benefits. Take for example the Employment Authorization Document ("EAD card") theoretically made available for the spouses of H-1B and L-1 holders. In the past, i.e. before March 2019, dependent EAD applications could be adjudicated at the same time as the principal applicant meaning that premium processing could provide H-1B and H-4 EAD adjudication within 15 days.



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At present, in July 2021, this identical benefit could take upwards of 12-15 months; a barrier so acute that leading US companies, along with the U.S. Chamber of Commerce, filed an amicus brief in a larger federal case, asserting that “delays in EAD adjudications are directly and indirectly affecting the economy” noting that most of the 580,000 H-1B and 75,000 L-1 visa holders have highly educated and highly skilled spouses that cannot reasonably obtain work authorization and the threat that these families may ultimately decide to take their talents to other workforces. (See: [Brief of Leading Companies and Business Associations as Amici Curiae in Support of Plaintiffs’ Motion for Preliminary Injunction](#))

Recognizing the logistical reality, the solutions brought forward thus far have proven to be band-aid measures. On 30 September 2020, the former President signed legislation containing language from the Emergency Stopgap USCIS Stabilization Act both increasing the cost of premium processing and allowing the Agency direct access to its proceeds. With this gain, also came a lack of visibility; USCIS was unable to predict the increases in case volume in conjunction with the case-type rollout as well as the labor-intensive staffing requirements of a premium processed adjudication. On 13 May 2021 (effective 17 May 2021), USCIS temporarily suspended the biometrics requirement for H, L, and E dependent extensions for a two-year term. While this eases the workflow moving forward, the backlogs and delays remain significant. USCIS cancelled nearly 300,000 interviews at the start of the pandemic, and with approximately 16 months having gone by, the Agency is currently operating at 70% capacity, at best. The simple math alone is not reassuring.

What this means

While the Report addresses key strategies to work through the massive backlog, the pervasive assertion is structural overhaul, confirming that USCIS cannot rely entirely on fees to fund operations. The Report suggests a hybrid of fee revenue and congressional funding to support efficiencies in order to dig out of the existing backlogs, without confirming a systemic process improvement strategy. In tandem, we note the Biden Administration has called for a one-time infusion of \$350 million for USCIS to clear historical application backlogs related to naturalization and asylum cases, making no mention of other significantly delayed case categories. Further, no mention of capital infusion to the State Department to clear the enormous COVID-19-related [backlogs in visa processing has been made](#).

EY Law will continue to monitor these developments. Should you have any questions, we encourage you to contact one of our U.S. immigration professionals.



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