

Response to Federal Register Notice (Vol. 79, No. 249, 12/30/14)¹
Improving the Nation's Legal Immigration System
January 29, 2015

Q3 (Streamlining & Improving USCIS' Visa Petition Process)

1. Fully automate/digitize the filing and adjudication process to:
 - Enable electronic filing of applications and petitions.
 - Conduct video interviews of applicants who have the capability and desire.
 - Capture biometrics on all applicants seeking an immigration benefit, including parolees, nonimmigrants, and dependents. Not only would this enhance national security and public safety, it would enable officers conducting video interviews to pull up the applicant's biometrics (e.g., facial image) to confirm identity. Could also confirm via fingerprint if the applicant has the technical capability. Many do and many will, and this will increase significantly over the years.
 - ❖ This will reduce the number of needed personnel, physical space, and costs associated with travel, while simultaneously enhancing the integrity of the process.
 - Pursue legislation integrating DOS and DHS visa processing {into DHS}.

Q3a (Family-based Immigrant Visa Petitions)

1. In the interest of integrity and national security, stop relying upon paper documents to evince consanguine (blood) relationships. Progressively begin to require petitioners and beneficiaries to have their DNA taken and matched.
2. Begin to transition to a 100% DNA requirement {that may, for example, take 5-10 years to complete} by requiring DNA verification for nationals:
 - from high risk countries,
 - undeveloped countries who do not have acceptable forms of birth and other records,
 - those who submit secondary evidence {such as affidavits}, and
 - on questionable/suspect cases.
3. As the process is automated (modernized), transition from an adjudication process to a verification process on certain applications, such as applications to replace lost or stolen permanent resident cards, non-marriage based relative petitions, and nonimmigrant visitors seeking an initial extension of stay. This will significantly facilitate the process, decrease processing times, and reduce the population of adjudicators without jeopardizing national security or public safety {as biometrics and biographic information would have been collected and the pertinent background checks completed as part of the electronic process}.

¹ DHS Docket No. USCIS-2014-0014.

Q3b/c/e (Family, Employment, & H-1B petitions)

The current process of requiring individual jobs to be posted and unsuccessful efforts to fill them documented to the satisfaction of the Department of Labor (DOL) and DHS is laborious, time-consuming, outdated, expensive, and fraud-ridden. Policies and procedures governing the issuance of labor certifications and the adjudication of employment-based visa petitions need to be modernized to better meet current and future business needs. A centralized, technology, and data-driven approach is pivotal in this regard and should be undertaken before any changes are made to current numerical quotas (so that we truly know what occupational shortages are in short supply). Towards this end, we recommend:

1. Working in partnership with or under the lead of DOL, develop a national database that collects job and occupational data in real time from state DOLs. This data should reflect occupational shortages by geographic location throughout the country. This database would also manage the allocation and use of visa numbers.
2. In that the development of this database will take years, in the interim, require DOL to publish triennial occupation lists or forecasts of actual national and area-specific shortages. Recognize these lists or forecasts as pre-certified shortages, meaning employers need not pursue a labor certification for the occupations listed.
3. Build within the national labor database, perhaps Phase II, a mechanism for employers to post job vacancies and lawfully authorized workers to apply for them. In a subsequent version, perhaps Phase III, build the capability for foreign nationals in the U.S. and abroad to apply for a job(s). Develop the system (business rules) to only allow non-lawful permanent residents to apply after the participating employers failed to recruit and hire lawful American workers.
4. In the case of nonimmigrant and immigrant hires, require employers to report the date employment commenced and “no shows”. Also require employers to update the national database when these foreign nationals change duties/positions, depart voluntarily, are paid a lesser wage, and/or are terminated. Require reasons for termination as well.

Q5. (Streamlining Adjustment of Status Process)

The above-mentioned web-based video interviewing capability would also significantly improve the adjustment of status process. After developing the new electronic system, we recommend:

1. Expanding Application Support Centers (ASC) to accommodate interviews of adjustment applicants who do not have the ability or desire to be interviewed via the internet. This would supplement district and field office interviews, result in being closer to the customers, enable more officers to telecommute, and reduce the amount of space needed in districts and field offices.
2. Pursue modification of Section 245, INA, to prohibit the adjustment of status of anyone who is not in lawful status at the time of making application. This, combined with a number of other integrity-based enhancements {addressed in a separate forum}, would encourage foreign nationals visiting this country to comply with the law.

Q6. (Streamline/Improve CBP Inspection Process at POEs)

1. Expand the nonimmigrant Visa Waiver and Trusted Traveler Programs to nationals from low risk countries. Specifically exclude nationals from countries considered hostile towards the U.S and nationals from countries with an unacceptable overstay rate.
2. Develop and engage an electronic biometric-based departure verification system.
3. Prohibit those who violate the conditions of admission from participating in the program for a specific period of time {to be determined by the egregiousness of the violation}.
4. Require all violators to pay a fine prior to being approved for reinstatement to the program.
5. Subject all violators to be removed from the U.S. expeditiously, without formal removal hearings (proceedings), absent a fear of persecution or eligibility for some other form of statutory or regulatory relief.

Q10. (EB-B Investor Program Improvements)

Pursue legislation:

1. Raising the amount of required investment to \$1 and \$2 million, respectively.
2. Eliminate or significantly restrict indirect investments.
3. Require investors to evince they possess and control the funds, and that said funds are immediately accessible/available.
4. Require a rather substantial deposit in a U.S. escrow account.
5. Rather than grant conditional residence, issue a nonimmigrant visa for an initial validity of 2-3 years, and a subsequent extension of up to 3 additional years, upon showing substantive progress in creating and standing up the business.
6. Grant an immigrant visa only after the business has been up and running for at least one year with at least 10 new lawful workers.
7. Perform random, unannounced audits, including on-site inspections, when applicable.
8. Conduct a National EB-5 Benefit Fraud Assessment (BFA) every three years.

Q11. (Protecting Labor Market)

To protect jobs for lawful workers, we must significantly weaken, if not remove, the magnet that induces illegal immigration (entries/overstays); it being unauthorized employment. We must also find a better way to determine true occupational labor shortages. In addition to developing the aforementioned data-driven national labor system, we recommend pursuing or supporting legislation:

1. Mandating E-Verify for all employers and entitlement agencies.
2. Transitioning E-Verify to a biometrics-based system.
3. Requiring all lawful workers, including U.S. citizens, to possess and produce a secure Government-issued social security card or other document containing a biometric.
4. Requiring the Social Security Administration (SSA) to transition to a secure biometric-based social security card over a progressive period of time. [Require all adults and older children entering the labor market who do not possess some form of Government-issued ID {containing a biometric} to register for a new secure social security card with SSA.
5. Developing a guest and/or seasonal worker program that allows temporary agriculture and other workers to enter and exit the U.S. for employment in areas certified by the DOL as being in short supply.

6. Tracking the entry and departure of said workers and remove those who violate the conditions of their visa from the program.
7. Enrolling workers in DHS' Trusted Traveler Program for facilitation, maintenance, and security purposes. Suspend employment and Trusted Traveler Program participation upon violating conditions of admission, and remove under Expedited Removal Authorities.

Q12. Improve/Refine DOL Labor Data

Same as Q3b/c/e above.

Q14.

In addition to automating the process and building a person and organization centric data system complete with electronic filing and web-based interviews, ensure the system contains advanced and 'Big Data' analytics to support a proactive anti-fraud operation. In today's post-9/11 world, we can ill afford to continue to operate in an entirely reactive, paper, and manual manner. We must take advantage of available technology to build an electronic capability to identify known and suspected fraud upon filing, as well as known and unknown patterns of fraud, and predictive risks. In that regard, we recommend:

1. Conducting Benefit Fraud and Compliance Assessments (BFCA) on asylum, employment, marriage, and religious worker-based applications petitions every three years. The BFCA should, at a minimum, reflect the causes, types and volumes of fraud found, and possible and proposed corrective actions. Each BFCA shall be shared with Congress and the American Public. An internal document could be prepared for law enforcement and other sensitive data. Engage the skill set needed to produce a scientifically valid assessment. FDNS' role should primarily be operational, but its director must have input into the report and be required to concur or non-concur.
2. Perform ongoing, random, and unannounced Compliance Reviews (also known as "site visits" or "site inspections") of employment, marriage, and religious worker-based petitions, and prepare an annual report of its findings and proposed corrective actions. USCIS should outsource the majority of these compliance reviews, under the direction and supervision of FDNS, in that the duties performed are not 'inherently' or 'nearly inherently' governmental. The duties performed are even less governmental than the duties performed by on-site USCIS contractors, who also have access to government systems and databases, and OPM's outsourced background investigation program. FDNS contract site inspectors do not require immigration expertise, nor will they make judgments or decisions. Their duties primarily consist of verifying a reported business actually exists, the beneficiary is performing the duties stated in the petition, the duties are performed at the required and labor-certified location, and the beneficiary is being remunerated as stated in the labor certification and visa petition.
3. Deferred Action for Childhood Arrivals Program (DACA) – Consistent with above, USCIS should :
 - Conduct random interviews on a sampling of applicants.
 - The primary objective here is to collect the information needed to determine the extent of fraud in the program, as well as the type, causes, patterns, and other indicators.
 - This information should be used to prepare guidance to immigration officers and develop the business rules needed to guide the development of analytics-based technology to more proactively detect fraud.

- Run key applicant biographic and other information against pertinent internal and external databases.
 - Internal: USCIS' Fraud Detection and National Security Data System (FDNS-DS) to identify matches and associations to known and suspected fraud cases and leads, and national security and public safety records.
 - External: Engage commercial data aggregator services, such as LexisNexis/ChoicePoint Clear, to verify key I-821D application data such as identity, period of presence in U.S., relationships, employment, and education². Perhaps this could be done as an expansion of the current USCIS SCOPS VIBE initiative, which uses an independent information provider (Dunn & Bradstreet) to validate data provided on employment-based petitions.
- Enhance FDNS-DS with advanced analytics software (using existing USCIS IT systems).
 - It is assumed that USCIS will process I-821D cases under the expanded DACA definition using a similar process as prior DACA cases. In fact, the only change we expect would be that new DACA cases would be managed in an instance of CLAIMS 3 LAN located at the Arlington office, instead of the NBC's C3 LAN which contains older DACA cases. It is noted that these older DACA cases are already contained in SC-CLAIMS.
 - Once the new Executive Action DACA cases are received by USCIS, the biographic data relating to these cases will likely be uploaded into C3 LAN (Crystal City), and, subsequently, into SC-CLAIMS (and CISCOR). SC-CLAIMS will, therefore, provide a data source against which SAS can run their predictive analytics program. They will not only be able to look for patterns within I-821D filings, but will also be able to search any patterns found against other applications that have been received by USCIS and contained in SC-CLAIMS. FDNS-DS data would also be available for data analytics.
 - Additionally, all documents submitted through a lock box (except for supporting documents with the I-140 and I-526) are scanned by the JP Morgan Bank as part of the receipt process and ingested into EDMS where they are retained for one year. The scanned application is used to QA, verify, and correct CLAIMS data which has been pulled off of the scanned documents via an OCR process. However, these digitized documents may be manually searched in EDMS using imbedded metadata such as receipt number, and associated with any cases which are identified by SAS as fitting into any found pattern.
 - Suspected and confirmed fraud cases which were identified via this process, or any other, could be entered into FDNS-DS. Data relating to known fraudulent documents may also be entered FDNS-DS as Leads, and digitized copies of such documents could be pulled from EDMS and attached to the Lead. This way, when a USCIS Immigration Service Officer checks DS as part of the adjudication process, they can pull up images of known fraudulent documents which they could compare with documents submitted with the case they are adjudicating.
- 4. Perform DNA testing on suspect relationships.
 - This would only be done when fraud indicators exist to warrant such testing.
 - It is suggested that USCIS contract with the appropriate vendors and develop a secure standard process.

² Know that biometric and biographical information is run against various law enforcement and intelligence databases/datasets as part of the background check process.

- In that the burden of proof is on the applicant, he/she should be responsible for this testing fee. Failure to do so would result in denial of the application.
5. Conduct an inclusive DACA Program Benefit Fraud Assessment.
- Take a statistical random sampling of all cases filed to date to determine the extent of fraud in the entire program. This also includes identifying the types of fraud, causes, patterns, and other indicators, as well as potential solutions and corrective actions.
 - This information should also be used to update guidance to immigration officers and the business rules that guide the development and use of analytics-based technology to more proactively detect fraud.

Q15/16.

Same as Q3b/c/e above.

Q17.

USCIS is still operating in antiquated paper environment, supported primarily by legacy INS mainframe systems and databases with little to no interface or advance search or analytics capabilities. This makes the answer to this question rather simple; all USCIS systems and filing processes need to be modernized (automated), complete with electronic filing, web-based video interviewing, and advance analytics. An electronic filing and web-based video interview process would likely carry the most value with USC IS customers (applicants, beneficiaries, and representatives). For businesses and persons seeking employment-based classifications requiring a lab or certification, the national labor system and processes provided in response to Q3b/c/e above would be extremely beneficial.

Q18.

The metrics associated with responses to Q3b/c/e, Q6, and Q14 would provide the American Public with a much better understanding of this country's legal immigration system and issues; something practically non-existent today. It would also prove valuable to Congress and other Government agencies and bodies. Full transparency should be the objective, especially today, when immigration reform is such a major issue. The ignorance that exists, in great part, is because the Government hasn't done a very good job keeping the public informed in a non-partisan and objective manner, which is clearly impeding Reform efforts.

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