

## Chronic Backlogs at USCIS Show Agency Is Not Ready for CIR-ASAP

By Jessica M. Vaughan

One of the many reasons why lawmakers have been loath to enact a mass amnesty and immigration expansion, such as the new Democratic amnesty bill (HR 4321, or CIR-ASAP), has been the government's chronically poor performance in administering all of our current (and previous) immigration benefits programs. Obama administration officials have assured the public that they are ready for this task.<sup>1</sup> But a look at the most recent workload report<sup>2</sup> from USCIS reveals that the agency is actually still deep in the weeds and unable to keep up with the existing workload. As of the end of June 2009, the agency had a backlog of nearly 2.7 million applications and petitions that were pending review, above and beyond the 1.8 million that had been completed that quarter. And recent statements<sup>3</sup> by agency head Alejandro Mayorkas suggest that huge fee increases for immigrants and hundreds of millions of dollars in increased taxpayer-funded appropriations will be required to improve the situation.

Apparently recognizing that this huge backlog of pending cases might send the wrong signal about the agency's efficiency and readiness for major immigration expansions, USCIS uses alternative calculations and definitions of the processing backlog as smoke and mirrors to disguise the true scale of the problem. In its last quarterly report to Congress, it claimed the backlog was about 207,000 cases. (Note that the processing backlog, which here refers to the number of applications for immigration benefits of all kinds that the government has yet to act on, should not be confused with the immigrant visa waiting list, which refers to the applications in the queue that results from statutory limits on the number of green cards issued each year. For more on this, see <http://cis.org/Vaughan/FamilyImmigrantWaitingList>.)

How did they get from 2.7 million pending cases to only 207,000 cases in the backlog? An excerpt from a table in the quarterly report is on page 3. This table is a reminder of both the complexity of U.S. immigration law and the many ways otherwise unqualified people can bypass the conventional green card process (temporary protected status, cancellation of removal, temporary work permit, crime victim, waiver of inadmissibility, etc.). The first column lists the type of immigration benefit, which corresponds to a specific form that has to be filled out by an applicant or sponsor.

The second column shows the number of cases completed by USCIS in the third quarter of FY 2009 (April through June): Just over 1.8 million. This illustrates the huge volume of cases that churn through the agency.

The third column shows the number of cases still pending at the end of the quarter, even after the cases in column 2 were completed: nearly 2.7 million. This is the actual backlog. (Encarta Dictionary defines "backlog" as follows: "backlog: Things still to be done. A quantity of unfinished business or work that has built up over a period of time and must be dealt with before progress can be made.") There are several types of applications, especially common ones such as naturalization, regular green card, asylum, work permits, and fiancé/ée petitions, where the number of cases pending far exceeds the number of cases completed by USCIS in the quarter.

Column 4 shows what USCIS calls the Gross Backlog, totaling more than 1.3 million cases at the end of the quarter. In the report glossary, the USCIS definition of Gross Backlog is the number of cases pending that exceed an "acceptable pending" processing time. Acceptable Pending processing time is defined as the time USCIS thinks is reasonable to process the application, or up to six months. So the Gross Backlog includes only those cases that have taken longer than six months to process. Perhaps congressional supervisors should re-visit the USCIS definition of

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“acceptable,” as six months seems like a very long time for the government to decide if it will grant a benefit. Six months (or more) would be entirely unacceptable for most other kinds of government benefits.

The last column shows the Net Backlog, which is the figure USCIS reports as “the backlog.” To arrive at the Net Backlog, USCIS subtracts from the Gross Backlog all those cases that are delayed “for reasons outside USCIS control.” Some are cases awaiting another agency’s action, such as an FBI name check. Some are cases on the waiting list, which are stalled because visa demand exceeds visa availability. Of course, to the applicant, it matters little which agency is the source of the delay; what matters is that there is a delay, and the average person would consider these cases “backlogged.”

The Democratic amnesty bill claims it will reduce the visa and benefits backlogs. In Title III of the bill, called Visa Reforms, the bills says it will reduce backlogs by:

1. Issuing hundreds of thousands of “recaptured” visas that were not used in previous years;
2. Providing for immediate applications from hundreds of thousands of spouses and children of green card holders;
3. Providing for immediate applications from sons and daughters of Filipino WWII veterans;
4. Allowing unlimited admissions of skilled workers;
5. Allowing hundreds of thousands of skilled temporary workers (H-1Bs) to apply immediately for green cards;
6. Increasing the number of illegal aliens qualifying for cancellation of removal;
7. Allowing more poor people to sponsor relatives for green cards; and
8. Admitting 100,000 new unskilled workers annually through a lottery system.

Not to mention allowing at least 11 million illegal aliens to apply for conditional status, which will lead to permanent status and, eventually, citizenship.

Considering that the green card application process already requires the submission of at least two sets of forms that must be adjudicated in at least two separate actions by USCIS (at a minimum the petition, the immigrant visa or adjustment application, and/or biometrics collection), these provisions will dump literally tens of millions of new forms into USCIS lockboxes and service centers over a very short time period. If the agency is already this backlogged with processing just 640,000 new immigrants a year, we can only imagine what the results will be if the Democratic amnesty and immigration expansion plan is enacted. It evokes memories of the disastrous Clinton administration Citizenship USA program, when the INS was ordered to clear the backlog of citizenship applications to increase the number of voters in the 1996 presidential election. In their haste, agency employees skipped critical steps (like criminal background checks), resulting in the erroneous naturalization of thousands of ineligible immigrants.

By imposing this unreasonable workload on USCIS, the Democratic CIR-ASAP plan will gum up the system to a degree not seen since the mid-1990s. Such a profound setback in benefits processing would be a blow felt mainly by the citizens, legal immigrants, and employers trying to navigate the system legally.

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## End Notes

<sup>1</sup> Julia Preston, “Agency Plans for Visa Push by Residents Made Legal,” *The New York Times*, October 1, 2009, [http://www.nytimes.com/2009/10/02/us/politics/02immig.html?\\_r=1](http://www.nytimes.com/2009/10/02/us/politics/02immig.html?_r=1).

<sup>2</sup> USCIS Production Update: FY 2009 Report to Congress, Third Quarter, October 5, 2009, <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=0e3817f960082210VgnVCM100000082ca60aRCRD&vgnnextchannel=9a1d9ddf801b3210VgnVCM100000b92ca60aRCRD>.

<sup>3</sup> Katherine McIntire Peters, “Budget crunch could force fee hikes at immigration agency,” *Government Executive*, December 10, 2009, [http://www.govexec.com/story\\_page.cfm?articleid=44221&dcn=todaysnews](http://www.govexec.com/story_page.cfm?articleid=44221&dcn=todaysnews).

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Backlog of Immigration Benefit Applications as of June 2009

Type of Benefit	Cases Completed in Q3	Pending, End of Q3	Gross Backlog	Net Backlog
Naturalization - Regular	183,036	259,295	4,758	-
Naturalization - Military	3,060	4,186	344	336
Adjust to Green Card - Regular	160,256	473,183	327,915	111,222
Adjust to Green Card - Indochinese	34	35	25	24
Adjust to Green Card - Asylum	15,221	26,678	12,801	9,887
Adjust to Green Card - Refugee	24,751	19,876	-	-
Petition - Family Green Card	315,469	1,232,540	939,503	31,827
Green Card Renewal	164,185	104,091	-	-
Petition - Temporary Worker	131,303	74,751	8,958	-
Travel Document (for those w/o status)	108,490	45,613	-	-
Petition - Employment Green Card	37,442	26,721	5,283	2,745
Extend/Change Temporary Status	46,940	30,455	-	-
Remove Conditional Status (marriage)	70,668	91,987	-	-
Temporary Work Permit	297,316	121,185	-	-
Temporary Protected Status	39,367	17,031	14,713	13,731
Citizenship Certificate (child of citizen)	22,000	18,194	-	-
Asylum and Withholding of Removal	8,713	7,448	-	-
Suspension of Deportation/Cancel Removal	1,153	975	-	-
Asylum - Credible Fear Referral	1,253	151	-	-
Replace Visitor Arrival/Departure Record	4,065	3,279	-	-
Petition - Fiancé/ée	12,929	26,850	4,754	3,301
Petition - Special Immigrant	5,637	14,397	7,371	4,106
Petition - Entrepreneur	334	327	-	-
Petition - Orphan Adoption	5,423	3,373	4	4
Petition - Convention Orphans	1,390	320	-	-
1986 Amnesty Applications	1,108	2,055	1,291	1,238
Petition - Family of Refugee/Asylee	7,835	9,672	2,219	899
Family of 1986 Amnesty Beneficiary	1,030	1,164	93	-
Notice of Change of Status for Processing	5,647	7,345	2,678	2,375
Remove Conditional Status (entrepreneur)	126	467	272	-
Victim of Human Trafficking Visa	197	457	229	134
Crime Victim and Family Visa	3,228	24,727	20,937	17,409
Declaration of Intent to Naturalize	151	20	-	-
Request Hearing for Naturalization Denial	145	438	210	208
Replace Naturalization Certificate	8,850	7,392	-	-
Waiver of English/Civics Requirements for Citizenship	2,972	3,141	799	799
Immigrant Visas	108,010	8,516	-	-
EOIR Adjustment Processing	9,664	81	-	-
Waivers of Ineligibility	8,600	15,833	7,122	6,951
<b>Total</b>	<b>1,817,998</b>	<b>2,684,249</b>	<b>1,362,279</b>	<b>207,196</b>