



**Homeland
Security**

RECOMMENDATION FROM THE CIS OMBUDSMAN TO THE DIRECTOR, USCIS

To: Eduardo Aguirre, USCIS Director
Cc: Michael P. Jackson, Deputy Secretary
From:: Prakash Khatri, CIS Ombudsman
Date: May 9, 2005
Re: Recommendation to USCIS to correct apparent failures to perform by its agent (Department of the Treasury and its contractor, Bank One, Inc.) for its inability to timely issue receipts to petitioners and applicants.

I. BACKGROUND

Through a Memorandum of Understanding (MOU) with the Department of the Treasury, USCIS has established a lock-box operation in Chicago, IL to receive petitions and applications. This lock-box operation is being performed by Bank One, Inc. which is under contract to the Department of the Treasury as a U.S. Government Depository. The establishment of this lock-box operation was purported to satisfy Department of the Treasury requirements that monies presented to USCIS as fees for petitions and applications be deposited at a U.S. Government Depository within one business day of presentation by petitioners and applicants.

As of March 31, 2005 a total of **123,381** envelopes containing an estimated **247,724** fee-based petitions and applications with an estimated value of **over \$55,000,000**, and **30,524** no-fee petitions and application were reported by USCIS as being at the lock-box operation, but remained unopened and unprocessed. USCIS estimated that it would take **30.7 business days** to deposit the submitted fees and issue receipts to the petitioners and applicants. As noted above, their goal is to process in one business day, which makes them deficient by an average of **29.7 business days** per petition.

The problem of late receipts and no traceability for petitioners and applicants of submissions made to USCIS, which were sent by USCIS to the Chicago lock-box has continued for several months with no signs of abatement. This is an area of concern especially in light of direct filing procedures being implemented throughout the country in various phases which will feed more and more petitions and applications to the lock-box in the months to come.

II. JUSTIFICATION

The petitioners and applicants for immigration benefits are individuals and employers who see themselves as having responded to a USCIS' offer to grant immigration benefits to

qualified offerees upon the submission of the requisite petition(s)/application(s) and payment of the USCIS-specified fee(s), thus, from the perspective of these same individuals and employers, forming a *contract* between them and USCIS in which all of the facets (**offering** of immigration benefits, **acceptance** by submission of the application(s), **consideration** in the form of filing fee(s) and **performance** of the benefit in a reasonable amount of time) exist. They expect that USCIS will perform as any party-to-contract should, and that is with a timely receipt for the consideration (fees) provided and recognition via receipt of the submission of the offeree's performance (the completed petition(s)/application(s)). They expect customer service satisfaction for the consideration (fees) provided.

In combination with the belief by petitioners and applicants that USCIS has contractual performance obligations towards them, USCIS is required to adhere to 31 U.S.C. § 3302© which requires the depositing of monies presented to an entity of the U.S. Government within the third business day of delivery of these monies to USCIS. That delivery occurs not when USCIS or any agent thereof decides to open an envelope delivered by the U.S. Postal Service or recognized commercial courier (e.g., Federal Express, United Parcel Service, etc.), but upon the acceptance of said envelope from the deliverer by USCIS or its agent. When average processing time to deposit these monies and issue a receipt exceeds 31 USC §3302© timeframes and internal USCIS goals, and the current frontlog is estimated by USCIS to take about 30.7 business days, performance is not being met. In fact, it is being affected and hampered to the detriment of the petitioner and/or applicant.

Petitioners and applicants rely on the USCIS receipt for a myriad of reasons including but not limited to evidence to courts of law of timely filing, eligibility for governmental services or benefits and proof of action to employees/employers/unions. Proof of timely filing is key to receiving benefits and services. If a receipt takes 30.7 days to be issued this may unnecessarily harm the economic and financial well-being of the applicant, putting not only his life on hold, but that of his family, hurting his job and/or business interests, and generating time consuming inquiries with the various USCIS venues of information that could have been avoided by prompt depositing and initial processing of the applications.

USCIS' responsibilities as a party-to-contract are to timely issue receipts and deposit monies. USCIS may delegate these actions and/or subcontract their actions to other government entities or private contractors, but delegation does not relieve USCIS from responsibility for these actions to the other party-to-contract, namely the petitioners and applicants. Under the MOU, the lock-box operation is performed by a Treasury Department subcontractor, Bank One, Inc., who has certain responsibilities and obligations to meet, namely depositing the application fees. Should it be found in non-compliance, it may open the door for claims against USCIS, being that it is responsible for the actions of Bank One, Inc. This would also apply if USCIS did not meet its obligations of oversight and review of Bank One procedures and processes as agreed to and understood in the MOU.

If USCIS "subcontracts" its contractual performance responsibilities to issue timely receipts and deposit monies, USCIS must insure that petitioners and applicants are not harmed by USCIS' subcontractors and agents performance or lack thereof, and as the breaching party-to-contract must rectify the problem or potentially face claims for damages. Concurrently, if USCIS' subcontractors and agents do not adhere to 31 U.S.C. § 3302(c) regarding timely depositing of monies presented to the U.S. Government, their failure to perform is ultimately USCIS' failure to perform.

III. BENEFITS

Customer Service:

Customers would receive timely receipts for petitions and applications, thus reducing complaints and inquiries to Congress, USCIS and the CIS Ombudsman. This would allow for a more efficient allocation of resources and time by all parties. It would allow for USCIS to focus on processing and adjudicating the applications, and to handle other types of customer inquiries. Additionally, the potential for future mandamus litigation would be reduced.

USCIS Efficiency:

USCIS would be able to more accurately determine its work load requirements, as the true number of pending petitions and applications would be timely available for assignment and processing, instead of sitting for days/weeks in mail bins at the Chicago lock-box, especially with the expansion of the direct filing program which will dramatically increase the number of applications submitted to the lock-box. Additionally, USCIS would have the benefit of better fiscal performance due to timely recording and access to fees, rather than these fees remaining for days/weeks in unopened envelopes at the Chicago lock-box.

National Security:

This recommendation poses no risks to national security and actually enhances the integrity of the USCIS data base on the whereabouts of aliens currently receiving or applying for immigration-related benefits due to a quicker turnaround for data entering and updating.