

Review of INS' Fees for Appeals and Motions Under the Jurisdiction of the Administrative Appeals Office

FINAL REPORT

November 2002

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1 EXECUTIVE SUMMARY

The Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Act, 1989, Pub. L. No. 100-459, Sec. 209, 102 Stat. 2186, 2203 (October 1, 1988), authorized the Service to prescribe and collect fees to recover the cost of providing certain immigration and naturalization benefits. Pursuant to the CFO Act of 1990, the Service is also required to review, and revise if appropriate, user fees on a biennial basis. This report contains a review of two of these fees. The first is the fee for filing an administrative appeal (Form I-290B) and the second is the fee for filing a motion to reopen or to reconsider any decision under immigration laws in any type of proceeding over which the Board of Immigration Appeals (BIA) does not have jurisdiction. These fees are deposited into the Service's Immigration Examinations Fee Account (IEFA).

The current appeal and motion fees of \$110 have been in place since 1989. Neither fee amount has been reviewed or updated since 1989 because: 1) other higher volume, higher revenue immigration benefit applications have taken precedence; and 2) it was believed that the volume of appeals and motions was small given the limited available volume information. The fees are being reviewed now because: 1) accurate volume information has been obtained indicating that volumes are significantly higher than previously thought; 2) an increase in the volumes of appeals and motions are expected beginning in FY 2003; 3) full cost was not being recovered by the \$110 fees being charged and, as a result, other immigration benefit application fees have been subsidizing the cost of processing appeals and motions; and 4) the processing times for appeals and motions were not in line with the President's goal of a six month or less processing time for all immigration benefit applications.

The review team consisted of INS Office of Budget and KPMG Consulting (now referred to as BearingPoint) personnel (the "fee review team"). The fee review team ensured that the proposed fees adhere to applicable federal law and fee guidance. This report presents the proposed fee amounts, an overview of the approach utilized, as well as the assumptions supporting the proposed fee amounts.

1.1 RESULTS

Because the process and time involved are similar for both appeals and motions, the fee review team has determined the fee to be equal for both appeals and motions. The proposed fee is determined to be **\$383** for appeals and motions filed under the jurisdiction of the Administrative Appeals Office (AAO). This proposed fee will allow INS to recover full cost in accordance with Federal law and user fee guidance as well as meet the President's goal of processing immigration benefit applications in six months or less.

Primary factors contributing to the proposed fee amounts are:

- Personnel Costs: A total of 49 INS personnel were identified to support the program in FY 2003 and 58 were identified for FY 2004, not including contractors. Total personnel costs also include 11 contractors in FY 2003 and 13 contractors in FY 2004.
- Volume: The estimated number of appeals and motions completed by AAO adjudicators was determined to be approximately 15,300 for FY 2003 and 18,700 for FY 2004.
- Performance: Performance is expected to improve from a total processing time (from customer filing to receipt of decision) averaging approximately 7 months today to 6 months by the end of FY 2004 and 5 months by the end of FY 2007 even though volume is expected to more than double over the same period. This processing time is in line with the President's five-year goal of processing immigration benefit applications in six months or less.

1.2 BACKGROUND

The AAO adjudicates administrative appeals filed on Form I-290B and motions to reopen or reconsider not under the jurisdiction of the BIA. Appeals and motions allow petitioners a "second opinion" or to present new evidence in order to overturn a previously denied benefit application. Appeals and motions are filed by petitioners at INS service centers or district offices.

1.3 METHODOLOGY

The fee review team followed a methodology which conforms to the requirements of federal cost accounting and fee-setting standards and guidelines established by the Office of Management and Budget (OMB) Circular A-25, and the Federal Accounting Standards Advisory Board (FASAB) Statement of Federal Financial Accounting Standards No. 4: Managerial Cost Accounting Concepts and Standards for the Federal Government. OMB Circular A-25 requires full cost recovery through fees charged to the program. An analysis of all cost components was completed to determine whether: 1) each merits inclusion in the proposed fee calculation; and 2) the amount identified by subject matter experts (SMEs) is reasonable.

This fee review will also assist the Service in conforming to the Government Performance and Results Act (GPRA) of 1993. GPRA directs federal agencies to establish performance plans and to measure and report performance on a periodic basis. This review illustrates the link between cost and performance and recommends actions the Service can take to meet performance benchmarks.

1.3.1 Scope

The proposed fees are designed to recover costs over the FY 2003/2004 time period.

1.3.2 Cost

Cost data was obtained primarily from the Service's financial systems and secondarily through interviews with program SMEs. Interviews were conducted to identify personnel and other costs areas related to appeals and motions over which AAO has jurisdiction. Projected costs were identified for fee calculation purposes in line with full cost recovery guidance contained in federal user fee guidelines. The total estimated cost of processing appeals and motions for the FY 2003/2004 period is \$13.0 million (\$5.8 million for FY 2003 and \$7.2 million for FY 2004).

1.3.3 Volume

Historical volumes of appeal/motion receipts and completions were identified through a combination of data collected from the Service's Performance Analysis System (PAS), Computer Linked Application Information Management System (CLAIMS), AAO management reports and interviews with SMEs. Projected receipt and completion volumes were based on an analysis of historical data.

1.3.4 Unit Cost and Fee Calculation

Unit cost was determined by dividing total FY 2003/2004 AAO costs by total FY 2003/2004 completion volumes. The unit cost is an estimate of the cost associated with each completed appeal or motion. The table below shows the calculation of the unit cost and proposed fee:

Appeal/Motion Unit Cost & Fee Calculation	FY 2003/2004
Appeal/Motion Processing Costs (1)	\$ 13,021,582
Appeal/Motion Completion Volume (1)	34,000
Appeal/Motion Unit Cost & Proposed Fee	\$ 382.98
Rounding Adjustment	0.02
Proposed Appeal/Motion Fee (rounded)	\$ 383.00

(1) costs and volume associated with processing certifications not included.

The proposed fee of **\$383** will be reviewed again by the Service as part of its requirement to do so every two years. The increase in the fee from \$110 to \$383 is consistent with increases in other immigration benefit fees since 1989. The proposed fee is not expected to be implemented until August 2003 resulting in fee revenue of \$3.1 million in FY 2003. Fee revenue is expected to be \$9.2 million in FY 2004. It is also worth noting that expected fee revenue does not equal total cost because revenue is based on receipt volume and cost is based on completion volume.

2 BACKGROUND

2.1 OVERVIEW

The current appeal and motion fees of \$110 have been in place since 1989. As a result, the Office of Budget recognized the need to revise the fees to reflect full cost, to account for increased volumes, and to achieve the President's goal of six months or less processing time for all immigration benefit applications. Fee revenue is required to be deposited into the Service's Immigration Examinations Fee Account (IEFA).

Since 1989, fees for benefit applications with similar labor intensity increased anywhere from three to five times. For example, the Form N-400 Application for Naturalization has increased from \$60 to \$260 since 1989. The table below shows the Form N-400 and other fee increases:

Immigration Benefit Application Fee History Form and Description	Prior to IEFA		FY 1989	FY 1991	FY 1994	FY 1999	Current Fees
	FY 1985	FY 1986					
I-90 Application to Replace Alien Registration Card	\$15		\$35	\$70	\$75	\$110	\$130
I-102 Application to Replace Nonimmigrant Document	\$15		\$35	\$50	\$65	\$85	\$100
I-129 Petition for Nonimmigrant worker				\$70	\$75	\$110	\$130
I-129F Immigrant Petition of Nonimmigrant Fiance(e) Orphan	\$35		\$40	\$75	\$75	\$95	\$110
I-130 Petition to classify status of alien relative for immigration visa	\$35		\$40	\$75	\$80	\$110	\$130
I-131 Application for Travel Document	\$15		\$45	\$65	\$70	\$95	\$110
I-140 Immigrant Petition for Foreign Worker	\$50	\$35	\$50	\$70	\$75	\$115	\$135
I-192 Application for Advance Permission to enter as a Non-Immigrant	\$50		\$50	\$90	\$90	\$170	\$195
I-212 Application to Reapply for Admission into the U.S. after Deportation	\$50		\$50	\$90	\$90	\$170	\$195
I-360 Petition for Amerasian, Widow(er), or Special Immigrant						\$110	\$130
I-485 Application to Register Permanent Status or Adjust Status	\$50		\$60	\$120	\$130	\$220	\$255
I-526 Immigrant Petition by Alien Entrepreneur				\$140	\$155	\$350	\$400
I-539 Application to Extend Status - Change Nonimmigrant Status	\$15		\$35	\$70	\$75	\$120	\$140
I-600/600A Petition to classify orphan as an immediate relative	\$50		\$75	\$140	\$155	\$405	\$460
I-601 Application for Waiver on Grounds of Excludability	\$50		\$50	\$90	\$90	\$170	\$195
I-612 Application for Waiver of the Foreign Residence Requirement	\$50		\$50	\$90	\$90	\$170	\$195
I-690 Application for Waiver of Excludability							\$35
I-751 Application to Remove Conditions on Residence			\$35	\$65	\$80	\$125	\$145
I-765 Application for employment authorization , per 8CFR 274a.13			\$35	\$60	\$70	\$100	\$120
I-817 Application for voluntary departure under Family Unity Program				\$75	\$80	\$120	\$140
I-824 Filing for action on approved application or petition				\$30	\$30	\$120	\$140
I-829 Application for filing petition by entrepreneur to remove conditions					\$90	\$345	\$395
I-881 NACARA - Suspension of Deportation or Application Special Rule							\$215
I-914 Application for T Nonimmigrant Status							\$200
N-400 Application for Naturalization	\$35		\$60	\$90	\$95	\$225	\$260
N-565 Application to Replace a Naturalization citizenship Certificate	\$15		\$50	\$50	\$65	\$135	\$155
N-600 Application for certificate of citizenship, Sects. 309(c) or 341	\$35		\$60	\$90	\$100	\$160	\$185
N-643 Application for certificate of citizenship on behalf of adopted child				\$85	\$80	\$125	\$145
N-644 Application for Posthumous Citizenship							\$80
N-336 Request for Hearing on a Decision in Naturalization Procedures						\$170	\$195
N-300 Application to File Declaration of Intention						\$50	\$60
N-470 Application to Preserve Residence for Naturalization Purposes						\$80	\$95

Source: Title 8, Code of Federal Regulations.

The purpose of this review is to analyze the current fee of \$110, to calculate and propose a new fee based on current information ensuring full cost recovery in line with federal law and user fee guidance, and to assess current and required staffing at the AAO in order to meet or exceed the President's five-year performance standards

including a form processing time of six months or less. The fee review team assembled to perform the review consisted of INS Office of Budget and KPMG Consulting (now referred to as BearingPoint) personnel (referred to in the report as “the fee review team”). Key components of this effort include identifying:

- the volume of appeals, motions and certifications;
- the full costs of AAO activities;
- a strategy for logically assigning these costs to the appropriate service or benefit in conformance with federal cost accounting standards; and
- whether current authorized staffing will be sufficient to process increasing volumes of appeals, motions and certifications while at the same time improving performance to meet or exceed the President’s mandate.

2.2 FEE POLICY & GUIDANCE

The Service must follow prescribed guidelines, such as the Independent Offices Appropriations Act (IOAA) of 1952, the Chief Financial Officers Act of 1990 (CFO Act) and others. The INS employs the authority granted by the IOAA, 31 U.S.C. 9701, commonly referred to as the “user fee statute,” to develop its fees. The user fee statute directs federal agencies to identify services provided to unique segments of the population and to charge fees for those services, rather than supporting such services through general tax revenues. The IOAA states that “[i]t is the sense of Congress that each service or thing of value provided by an agency ... to a person ... is to be self-sustaining to the extent possible” and that each charge shall be fair and based on:

- the costs to the government;
- the value of the service to the recipient;
- public policy or interest served; and
- other relevant facts.

The Service also must conform to the requirements of the CFO Act, Pub. L. No. 101-576, 104 Stat. 2838 (1990). Section 205(a)(8) of the CFO Act requires each agency’s chief financial officer to “review, on a biennial basis, the fees, royalties, rents, and other charges imposed by the agency for services and things of value it provides, and make recommendations on revising those charges to reflect costs incurred by it in providing those services and things of value.”

When developing fees for special benefits, the Service adheres to the principles contained in OMB Circular No. A-25, Revised User Charges (1993). OMB Circular No. A-25 states that as a general policy a “user charge ... will be assessed against each

identifiable recipient for special benefits derived from federal activities beyond those received by the general public.”

The guidance contained in OMB Circular No. A-25 is applicable to the extent that it is not inconsistent with any federal statute. For example, specific legislative authority to charge fees for special benefits takes precedence over OMB Circular No. A-25 when the statute expressly designates “who pays the charge; how much is the charge; where collections are deposited.” When a statute does not address issues of how to calculate fees or what costs to include in the fee calculation, federal agencies must follow the principles and guidance contained in OMB Circular No. A-25 to the fullest extent allowable. The guidance directs federal agencies to charge the “full cost” of providing benefits when calculating fees that provide a special benefit to recipients. OMB Circular No. A-25 defines “full cost” as including “all direct and indirect costs to any part of the Federal Government of providing a good, resource, or service.” These costs include, but are not limited to, an appropriate share of:

- Direct and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement;
- Physical overhead, consulting, and other indirect costs, including material and supply costs, utilities, insurance, travel and rents or imputed rents on land, buildings, and equipment;
- Management and supervisory costs; and
- The costs of enforcement, collection, research, establishment of standards, and regulation.

Finally, Section 6(d)(1)(e) states that “[f]ull cost shall be determined or estimated from the best available records of the agency, and new cost accounting systems need not be established solely for this purpose.”

When developing fees for services, the Service also adheres to the cost accounting concepts and standards recommended by the Federal Accounting Standards Advisory Board (FASAB). The FASAB was established in 1990, and its purpose is to recommend accounting standards for the Federal Government. The FASAB defines “full cost” to include “direct and indirect costs that contribute to the output, regardless of funding sources,” Federal Accounting Standards Advisory Board, Statement of Financial Accounting Standards No. 4: Managerial Cost Accounting Concepts and Standards for the Federal Government 36 (July 31, 1995). To obtain full cost, FASAB identifies various classifications of costs to be included, and recommends various methods of cost assignment.

2.3 THE ADMINISTRATIVE APPEALS OFFICE

When a petition or application is denied or revoked by the INS, in most cases the petitioner may appeal that decision to a higher authority. The AAO has appellate jurisdiction over 66 petitions and applications (most of which are listed in 8 CFR § 103.1 (f)(3)(iii)). If a petitioner receives a denial notice, the denial notice will advise the petitioner of his or her right to appeal, the correct appellate jurisdiction (AAO or BIA), and provide the petitioner with the appropriate appeal form and time limit.

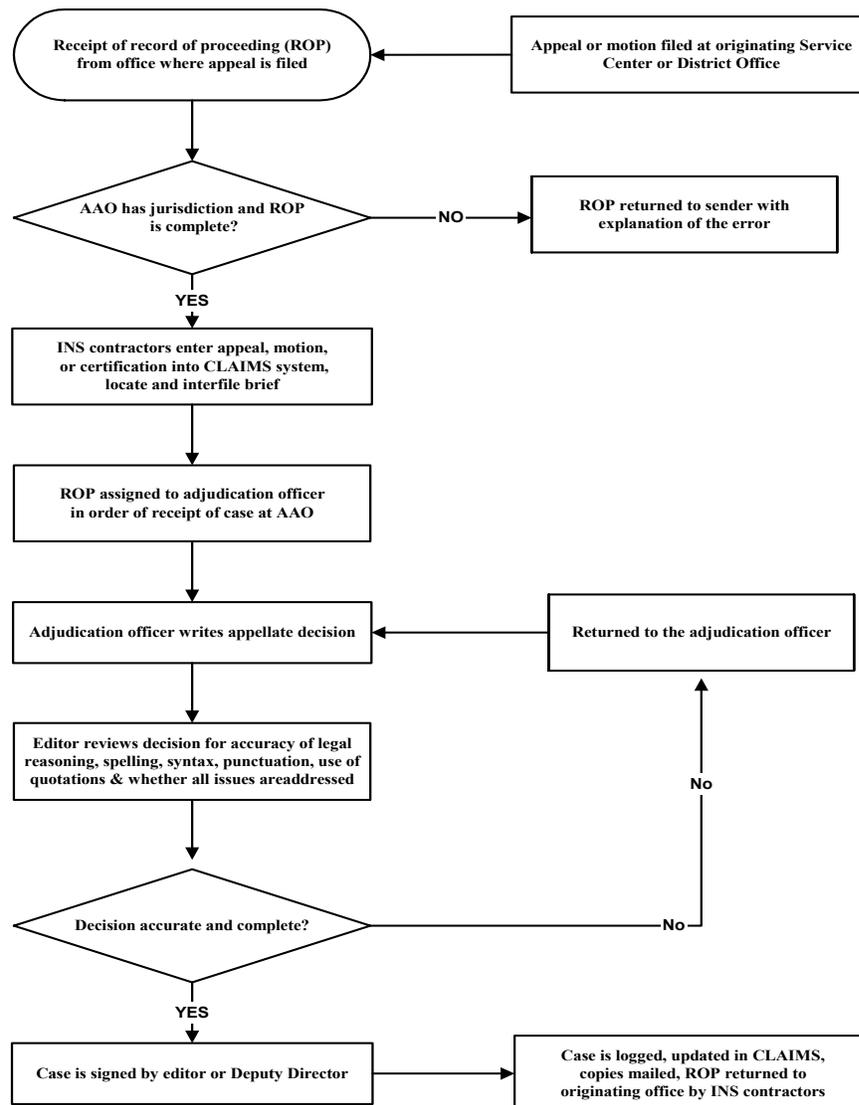
There are strict deadlines that must be met to properly file an appeal. Only the person that submitted the original application or petition may file the appeal. The petitioner alone has standing to appeal the denial of a visa petition. The beneficiary of a visa petition may not appeal the decision. For instance, if a United States employer petitioned for an immigrant visa for an employee living abroad, only the United States employer may appeal the denial. The employee living abroad may not appeal the denial. If the AAO has jurisdiction over the decision, the notice of appeal must be filed on Form I-290B (Notice of Appeal to the AAO). The appeal, as well as the accompanying fee, must be filed with the office that made the original decision. A brief (explanation) may be filed in support of an appeal. After review, the AAO may agree with the petitioner and change the original decision, disagree with the petitioner and affirm the original decision, or send the matter back to the original office for further action. Only one appeal may be filed for each denial or revocation; there is no appellate review of an appellate decision.

In addition to the right to appeal (in which the petitioner asks a higher authority to review a denial), the petitioner may file a motion to reopen or a motion to reconsider with the office that made the unfavorable decision – field office or AAO. By filing these motions, the petitioner may ask the office to reexamine or reconsider its decision. A motion to reopen must state the new facts that are to be provided in the reopened proceeding and must be accompanied by affidavits or other documentary evidence. A motion to reconsider must establish that the decision was based on an incorrect application of law or INS policy, and further establish that the decision was incorrect based on the evidence in the file at the time the decision was made. Any motion to reopen or reconsider must be filed with the correct fee within 30 days of the decision.

As mentioned, Form I-290B is used to appeal decisions arrived at by adjudication officers located at the Service's service centers and district offices. There is no form associated with filing a motion. The AAO also reviews decisions of the service centers and district offices certified to the AAO for review (referred to as "certifications"). There are no fees associated with certifications because they are internal to the Service. Only

a small percentage (less than 5%) of AAO's total workload consists of certification requests.

Appeals, motions and certifications require approximately the same amount of effort, on average, according to discussions with AAO management. The core work of writing and editing performed at the AAO is very labor intensive. Cases vary widely so the writing/editing process does not lend itself to automation. In addition, because of the complexity of writing and editing appeals and motions, contracting out is also not an option for the core processes. As a result, AAO costs consist primarily of staffing costs of its adjudicators. In some cases, AAO personnel also interact with the Service's Office of the General Counsel, Office of Policy and Planning (OPP) and the Library of Congress for assistance with adjudicating cases. The appeal/motion process is as follows:





3 RESULTS AND ANALYSIS

This fee review resulted in a proposed fee of **\$383**. At a high level, this fee amount is driven by projected costs as well as projected fee-paying volume. At a more detailed level, there are a number of assumptions that make up the expected future costs of the AAO and the projected fee-paying volume. This section of the report provides the basis for the proposed fee.

3.1 COST

Because the proposed fees are not expected to be implemented until August of 2003, they are based on what costs and volumes are expected to be in the future. For the determination of the proposed appeal and motion fees, costs expected to be incurred in FY 2003 and 2004 were used. These costs are based primarily on INS budgets and anticipated enhancement requests to those budgets as well as information provided by various Service SMEs. This information is deemed to be the most reliable information because it reflects the most up to date policy decisions and program operational plans that both the Administration and Congress have approved. In the federal sector, budgets are rigorously examined at all agency management levels, by the Administration through OMB reviews, and by the Congress.

For these reasons, this report uses current FY 2003 through FY 2004 budgets as the foundation for determining the full cost to provide appeal and motion services. To those budgets, additional funding requirements were added based on the assumption that more funding will be required to address additional workload resulting from an expected increase in Form I-17 appeals. The additional funds will support the costs of additional Service personnel and their training.

3.1.1 Service Personnel

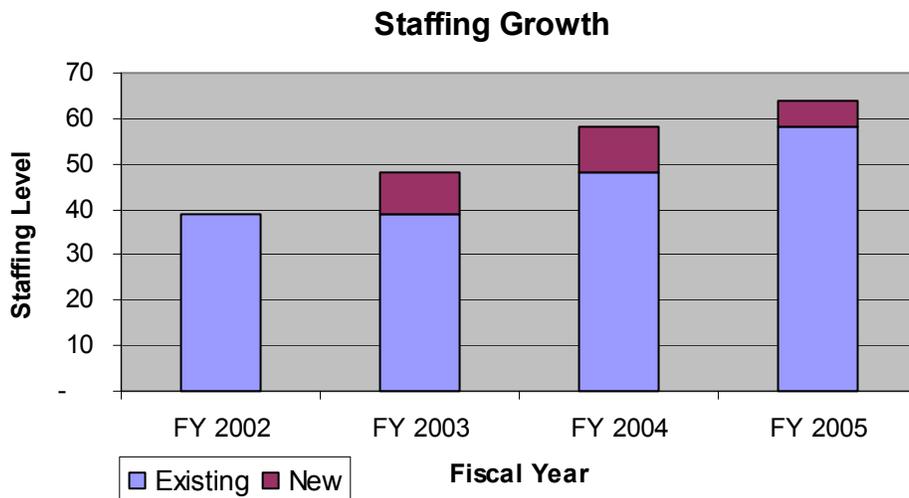
Staffing estimates were constructed based on current staffing and discussions with Service SMEs about authorized staffing and anticipated additions to authorized staffing. Meetings were conducted with the director and deputy director of AAO and representatives from the Adjudications Division (ADN). Representatives from service center operations and field operations were also consulted. SMEs assisted in determining the cost by identifying the required positions, the number of personnel required in each position, and the GS level required for each position.

To account for the full cost to the Service for personnel supporting the AAO, the Service's modular rates were used. The INS Office of Budget uses modular rates to develop personnel costs for annual budget requests. To support this fee review, an annualized modular rate was used to calculate full-year requirements for those positions currently filled and for those projected in the future.

Modular rates include the salary and benefits received and miscellaneous expenses, such as physicals and drug tests, uniform allowances, costs for service weapons, computers, vehicles, and furniture. The fee review team did not include all of the cost items in modular rates. Only those modular cost items deemed by the fee review team to be appropriate for AAO personnel were included. Field-specific items such as vehicles, weapons and ammunition were not included in the fee review calculation. In addition, general expenses paid for by ADN such as computer equipment, furniture and supplies were not included in modular costs because they were provided separately.

Modular rates also include the cost of utilities, but not rent. Therefore, the fee review team added rent as a separate cost item to program operations. However, because many of AAO's adjudication officers work offsite, rent was estimated only for the percentage of AAO case workers that regularly use AAO office space.

As of the end of FY 2002, AAO had approximately 39 permanent positions filled and 13 vacancies for a current authorized permanent staffing of 52, not including term positions. Ten of these positions are over-hires to take on workload resulting from the hiring of 1,300 new adjudicators being hired for field office positions. New positions are also expected to be required for SEVP-related volume resulting from Form I-17 certification applications being denied. These positions have not been authorized yet but the Service is moving forward in a reprogramming effort. The following projected staffing plan reflects the existing and new positions through FY 2005:



3.1.2 Contract Personnel

The AAO currently has nine full-time contractor personnel and one part-time dedicated to supporting AAO workload. The majority (eight) of these contractor positions are for file room, file tracking and file logistics related work. The remainder support the AAO in the IT area. The number of contractors required for FY 2003 and FY 2004 are expected to be 11 and 13, respectively.

Total projected AAO personnel costs, not including contractor costs, for FY 2003/2004 are \$11.1 million (\$5.0 million for FY 2003 and \$6.1 million for FY 2004). Contractor costs are expected to be approximately \$466,000 for FY 2003 and \$590,000 for FY 2004.

3.2 VOLUME

The appeal/motion fee calculation depends on expected future appeal and motion volume. Therefore, the volume estimate is a very important part of the fee setting process – if expectations are too optimistic and the projections are too high, the calculated fee will be too low to cover future costs. Typically, historical volumes are used to gauge future volumes based on some historical growth rate while at the same time considering other factors that may impact future volumes.

To establish a current volume baseline to apply growth estimates, the fee review team obtained receipt and completion volume data from various sources. Service center and district office personnel enter appeal and motion receipt volume information into the Service's Performance Analysis System (PAS). A limited amount of appeal and motion completion information can be found in PAS as well but only for motions decided at the service center/district office level. As a result, completion volume was provided by AAO management in the form of management reports used to evaluate personnel performance.

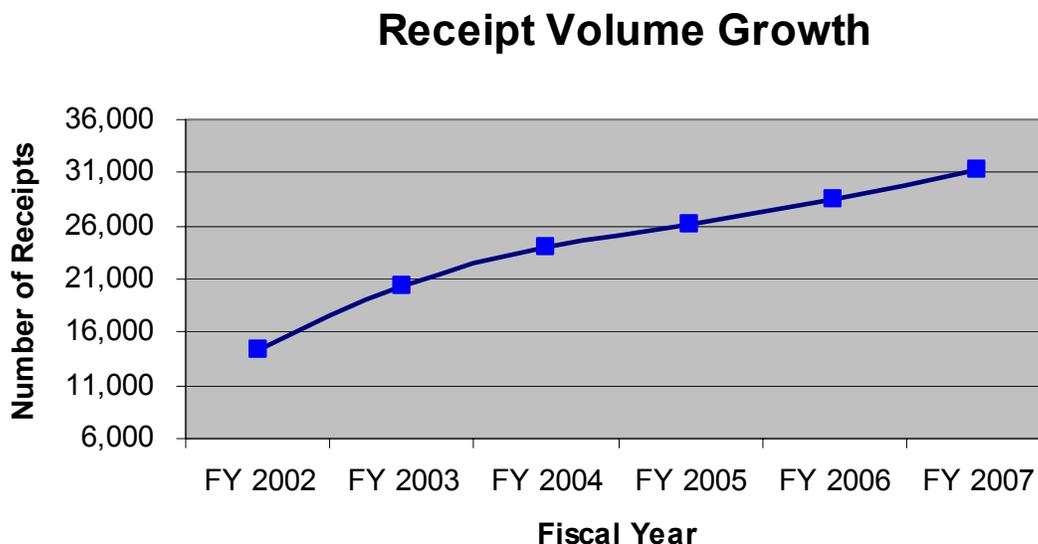
As stated in Section 2.3, certifications are internal INS requests for assistance in adjudicating applications and no fees are charged. Therefore, the cost and volume associated with certifications should not be incorporated in the calculation of the appeal or motion fees. Certification costs and volume should appropriately be captured in the fees associated with the appropriate form types which are adjudicated at the service center/district offices. AAO management does not track volume by appeals, motions and certifications, only by number of cases processed per person per

measurement period. Therefore, in order to assign costs and volumes to the corresponding benefits, the percentage of certification completions was estimated by sampling three weeks of completion data and deducted from AAO's completion volume.

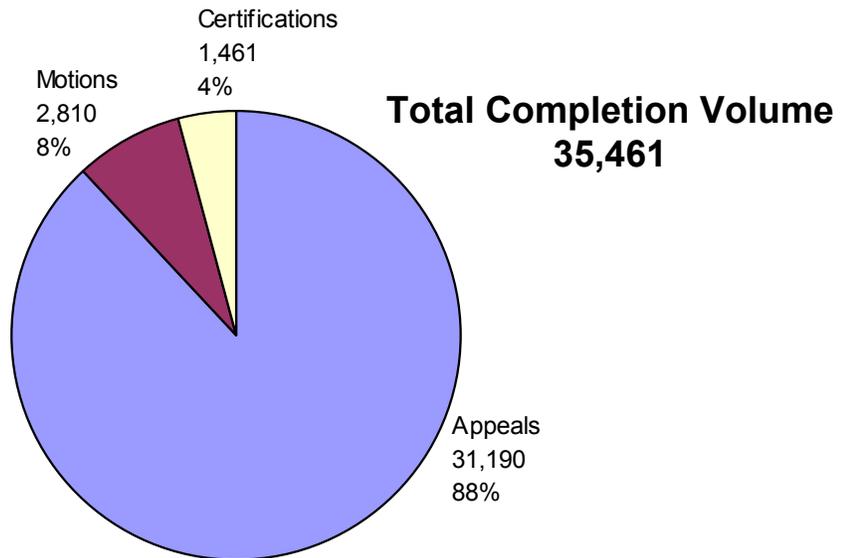
In addition to historical volumes growing at 12 percent, future volumes are expected to be impacted in two other areas. The first is an expected increase in appeal/motion volume resulting from 1,300 new field adjudication officers. The second is an expected increase in the number of appeals of SEVP school certifications and re-certifications. Both were estimated based on discussions with Service SMEs and included in projected volumes beginning in FY 2003.

Currently, some petitioners choose to re-file applications rather than file an appeal due to lengthy processing times for an appeal, and because of the low probability of having the same service center or district officer adjudicate a particular petitioner's request. It is expected that if appeal/motion processing times are reduced, more petitioners will file appeals instead of re-filing the underlying applications. The fee review team has factored this incremental increase into the volume projections by assuming that decreased processing times result in incremental volume increases. For example, if total processing time goes below 4 months, the fee review team is assuming that 10% more appeals will be filed. Volumes are not expected to change as a result of the increased fees.

Projected growth in the volume of receipts is illustrated in the graph below.



The graph below provides an illustration of the estimated future appeals, motions and certification volumes for FY 2003 and 2004 combined.



3.3 UNIT COST AND FEE CALCULATION

As shown in the formula below, unit cost was determined by dividing total FY 2003 and FY 2004 costs by total FY 2003 and FY 2004 volume. The unit cost is an estimate of the cost associated with each appeal, motion or certification that is processed by the AAO. The formula used to calculate unit cost is:

$$\text{Unit Cost} = \frac{\text{Total FY 2003 + FY 2004 Program Costs (1)}}{\text{Total FY 2003 + FY 2004 Completion Volume (2)}}$$

- (1) Total program costs do not include term positions but does include costs associated with certifications.
 (2) Total completion volume does not include LIFE Act volume but does include certification volume.

To arrive at the fee to be charged for appeals or motions, total program costs were divided by the estimated volume. Total costs and volumes were reduced by certification cost and volume, respectively. The appeal and motion fees are intended to fully recover costs.

The formula used to calculate the proposed fee is:

$$\text{Proposed Fee} = \frac{\text{Total FY 2003 + FY 2004 Program Costs (3) - Certification Costs}}{\text{Total FY 2003 + FY 2004 Completion Volume (4) - Certification Volume}}$$

- (3) Total program costs do not include term positions.
 (4) Total completion volume does not include LIFE Act volume.

The tables, below and on the following page, show the unit cost and fee calculations using the calculations provided above:

Unit Cost	FY 2003/2004
Total AAO Processing Cost	\$ 13,581,187
Volume	35,461
Calculated Unit Cost	382.98

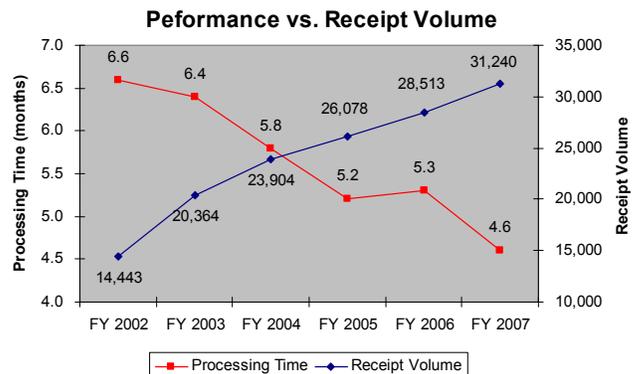
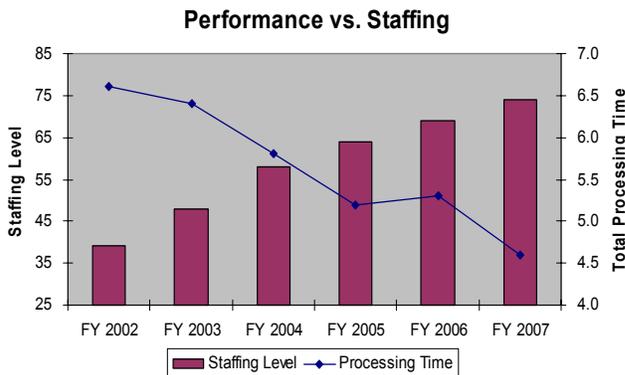
Fee Calculation	FY 2003/2004
Processing Cost:	
Total AAO	\$ 13,581,187
Less Certification	(559,605)
Appeals/Motion Processing Cost	\$ 13,021,582
Volume:	
Total Completion	35,461
Less Certification	(1,461)
Appeals/Motion Completion Volume	34,000
Calculated Appeal/Motion Fee	\$ 382.98
Rounding Adjustment	0.02
Proposed Appeal/Motion Fee (rounded)	\$ 383.00

Note: cost and volume shown in Executive Summary do not include certifications.

3.4 PERFORMANCE

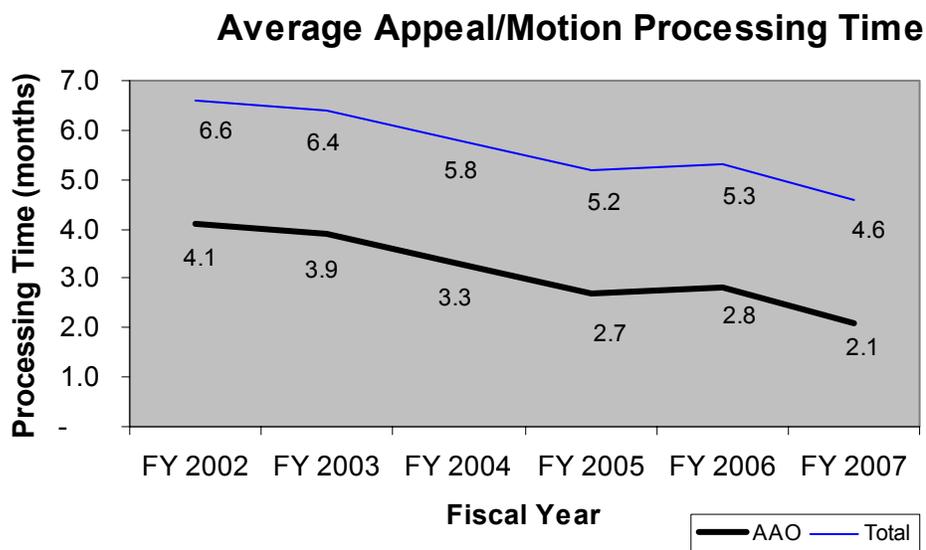
Currently, the total processing time averages approximately 6.6 months. Two to three months are spent at the SC/DO. Approximately four months, on average, are spent at the AAO. However, this time varies considerably based on the case type. Much of this time represents the AAO’s backlog – time spent waiting for a case worker to process the case. Because of the labor intensity of the AAO process, only with increased staffing will AAO’s backlog be reduced and total processing times be decreased. As one might expect, there is a trade off between performance and cost. Lower fees can be charged but only at the expense of performance. Discussions with SMEs have indicated that the customers in this case, the petitioners, are most concerned about processing time and less concerned about price.

The President’s five-year plan specifies that processing times should be six months or less by the end of FY 2007. The graphs below show the expected improvement in performance (processing time) due to planned and recommended staffing increases despite a more than 100% growth in the volume of receipts.



The results of this review show that performance levels can improve dramatically if staffing levels are achieved as detailed in this report. Specifically, the current total average processing time of 6.6 months can be reduced to approximately five months by FY 2005 and to below five months by FY 2007. For FY 2004 and beyond, processing times are expected to fall well within the President's mandate provided AAO receives staffing increases.

The graph below shows the expected improvement in performance, both total processing time and AAO processing time.



3.5 RECOMMENDATIONS

As a result of the analysis and observations in this review, the fee review team recommends the Service take the following actions as next steps:

- 1) Prepare proposed and final rules to adjust the appeal/motion fees;
 - 2) Proceed with the reprogramming of ten positions to accommodate the additional workload resulting from Form I-17 appeals and motions;
 - 3) Investigate case completion reporting: a) determine whether AAO case completion data is currently reflected in PAS; b) if not, determine a course of action within current INS guidelines to facilitate completion data availability;
 - 4) Monitor processing times on a monthly basis to ensure that service continues to improve;
 - 5) The current level of authorized staffing of 52 positions, along with ten additional positions for Form I-17 appeal/motion processing, will not be sufficient to meet the President's five-year performance mandate of processing applications in six
-

months or less given assumptions regarding rising volumes. Therefore, the Service should prepare to request two additional positions for FY 2005, and five per year thereafter in order to meet the President's mandate and to continue to meet the mandate in subsequent years as volumes continue to increase. These positions will be recovered through the appeal/motion fees; and

- 6) The Service should start a program of recovering the cost associated with processing certifications in the appropriate immigration benefit fees they support.
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4 APPENDIX A – ASSUMPTIONS

Detailed volume assumptions:

- Receipt volume for FY 2003 through 2007 was calculated using historical annual growth of 12%. Historical growth was calculated using total cases entered into CLAIMS from 1997 through 2002.
- Estimated receipt volume for FY 2003 through FY 2007 includes estimates of the case volume resulting from I-17 school certifications and re-certifications and volume resulting from 1,300 new field adjudicators but does not include an estimate for LIFE cases.
- I-17 volume was calculated based on an estimated 15,000 schools requesting certifications and re-certifications every two years, or 7,500 per year, and a 10% denial and appeal rate resulting in 750 cases per year beginning in FY 2003. I-17 related volume was not projected to increase for FY 2003 through FY 2007.
- Estimated volume arising from the 1,300 new field adjudicators assumed to be 3,000 in FY 2003 and 4,000 thereafter (i.e., fully staffed by FY 2004).
- Volume of certifications is not included in the fee determination.
- Volume breakdown between appeal, motions and certifications determined through a three-week sampling of completed cases. The results are as follows:

Appeals	Motions	Certs.	Total
555	50	26	631
88%	8%	4%	100%

- Base receipt volume is assumed to increase when processing time drops below certain thresholds as follows:
 - Processing time of 5 months or greater – no increase
 - 4 to 5 months – 5% increase
 - 3 to 4 months – 10% increase
 - 2 to 3 months – 15% increase
 - 2 months or less – 20% increase
- There is no assumed impact on volume resulting from the increase in the fees.
- Projected receipt volume:

Description	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Receipt Volume	14,443	20,364	23,904	26,078	28,513	31,240
Completion Volume	12,007	15,917	19,544	21,998	23,958	26,808

Note: volume from Form I-17 appeals and appeal volume associated with 1,300 more field adjudicators begins in FY 2003.

Detailed staffing and Backlog assumptions:

- Staffing requirements based on productivity per case worker as follows:

Continuing Adjudicator Productivity	2002	2003	2004	2005	2006	2007
Cases per Adjudicator per Year (1)	500	505	510	515	520	525
Cases per Adjudicator per Year (I-17 specialty) (2)			75	75	75	75
Blended Productivity	500	505	510	465	440	452
New Adjudicator Productivity (3)	2002	2003	2004	2005	2006	2007
Cases per New Adjudicator per Year (1,3)	375	379	383	386	390	394
Cases per New I-17 Appeal Adjudicator per Year (1,3)	-	-	56	56	56	56
Blended Productivity	375	379	219	254	390	394

(1) Assumed efficiencies due to greater degree of specialization, better workflow processes, and technology.

(2) Form I-17 appeals assumed to take 3 days on average to write the appeal decision and 45 productive weeks per year.

(3) Assumed new adjudicators are 0% for 3 months, then 100% productive resulting in 75% productivity in year 1.

- Projected ending backlogs for FY 2003 through FY 2007 were determined using the estimated number of appeals/motions transferred to AAO from field offices less AAO capacity plus the previous year's ending backlog. The FY 2002 ending AAO backlog was determined by a physical inventory conducted by the fee review team of the files located at the AAO.

Detailed cost assumptions:

- Costs exclude term positions hired beginning in FY 2003 for LIFE Act cases.
- One editor position required for every 3 to 8 writers required.
- FY 2003 and FY 2004 Modular Cost tables were used to calculate the FY 2003 through FY 2007 personnel costs. Personnel costs were adjusted with personnel salary & benefits (PS&B) and general expense (GE) inflation of 3.2% and 2.0%, respectively, to arrive at projected costs. The personnel lapse rate assumed was 0%. Position rates selected are general GS levels, not specializations.
- A portion of GE consisting of computer, furniture and supply costs is paid for by ADN. This portion of general expense has averaged approximately \$40,000 per year according to Service SMEs from ADN. This portion of projected costs is assumed to increase based on: 1) the annual GE inflation rate of 2.0%; and 2) total AAO staffing. These cost categories were excluded from modular costs for new or existing positions but were included separately.
- Actual steps were included as an input to determine the costs associated with existing personnel.
- New personnel coming onboard in FY 2003 through 2007 are assumed to start work for the Service at step 1. Modular costs for new positions or those filling vacancies include startup costs such as initial investigations costs, network installation costs and IRM training costs.

- Rent cost based on FY 2002 GSA rent schedule for Washington, DC/Capitol region. For FY 2003 through FY 2007, GSA rent inflation rate of 1.1% was applied.
 - A ratio of one contractor to every five AAO personnel was used to project the number of contractor positions. Contractor costs for FY 2002 were based on actual contracts for 2002 and projected for FY 2003 through FY 2007 using FY 2002 actual contract costs inflated using an inflation rate of 3.2%.
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5 APPENDIX B – SUPPORTING TABLES

The table below details AAO costs for historical and projected years and includes cost associated with processing certifications.

	FY 2002	FY 2003	FY 2004	FY 2005
Program Support -				
INS Personnel:				
Director	\$ -	\$ 134,168	\$ 138,455	\$ 142,980
Deputy Director	-	137,335	141,724	146,353
Branch Chief	-	358,284	620,350	770,080
Program Admin Assistant	-	48,048	49,579	51,260
Clerk	-	29,339	-	-
Secretary	-	56,462	58,262	60,221
Perm Adjudication Officer	-	3,784,037	4,707,483	5,378,605
Term Adjudication Officer	-	407,368	420,379	434,207
Subtotal INS Personnel	\$ 3,630,000	\$ 4,955,041	\$ 6,136,232	\$ 6,983,706
Contractor Personnel:				
Supervisory Clerical (LABAT)	\$ 41,618	\$ 42,950	\$ 101,368	\$ 104,612
Office Applications (LABAT)	51,291	52,932	106,424	109,830
Document Management (LABAT)	140,959	235,843	243,389	299,303
Technical Support	125,000	134,160	138,453	142,884
Subtotal Contractors	\$ 358,868	\$ 465,885	\$ 589,634	\$ 656,629
Total Personnel	\$ 3,988,868	\$ 5,420,926	\$ 6,725,866	\$ 7,640,335
Operations & Overhead (1):				
Operations	\$ 436,497	\$ 661,189	\$ 773,206	\$ 823,808
Total Operations & Overhead	\$ 436,497	\$ 661,189	\$ 773,206	\$ 823,808
Total	\$ 4,425,365	\$ 6,082,115	\$ 7,499,072	\$ 8,464,143

(1) Operations & Overhead includes communication, investigation, payroll, drug testing, facility R&A, network, rent, DOJ contractor fee, and other general expenses.

Modular costs used for new positions for FY 2003 and FY 2004:

FY 2003

Category	Description	Grade			
		12	13	14	15
11.1	Full-time permanent	\$ 56,832	\$ 67,583	\$ 79,862	\$ 93,940
12.1	Personnel Benefits	15,420	18,336	21,668	25,488
23.3	Communications	1,542	1,682	1,682	1,682
25.0	Investigations	6,630	6,630	6,630	6,630
25.0	Payroll	88	88	88	88
25.0	Drug Testing	105	105	105	105
25.0	IRM Training	950	950	950	950
25.0	Recruitment	549	549	549	549
31.0	Network-Enterprise	1,378	1,378	1,378	1,378
31.0	Network-Installation	3,112	3,112	3,112	3,112
Total		\$ 86,606	\$ 100,413	\$ 116,024	\$ 133,922

FY 2004

Category	Description	Grade			
		12	13	14	15
11.1	Full-time permanent	\$ 59,085	\$ 70,261	\$ 83,030	\$ 97,665
12.1	Personnel Benefits	16,543	19,673	23,248	27,346
23.3	Communications	1,689	1,862	1,862	1,862
25.0	Investigations	6,630	6,630	6,630	6,630
25.0	Payroll	89	89	89	89
25.0	Drug Testing	105	105	105	105
25.0	IRM Training	950	950	950	950
25.0	Recruitment	581	581	581	581
31.0	Network-Enterprise	1,378	1,378	1,378	1,378
31.0	Network-Installation	3,112	3,112	3,112	3,112
Total		\$ 90,162	\$ 104,641	\$ 120,985	\$ 139,718

Modular costs used for new positions for FY 2005 and FY 2006:

FY 2005

Category	Description	Grade			
		12	13	14	15
11.1	Full-time permanent	\$ 60,976	\$ 72,509	\$ 85,687	\$ 100,790
12.1	Personnel Benefits	17,072	20,303	23,992	28,221
23.3	Communications	1,723	1,899	1,899	1,899
25.0	Investigations	6,763	6,763	6,763	6,763
25.0	Payroll	91	91	91	91
25.0	Drug Testing	107	107	107	107
25.0	IRM Training	969	969	969	969
25.0	Recruitment	593	593	593	593
31.0	Network-Enterprise	1,378	1,378	1,378	1,378
31.0	Network-Installation	3,112	3,112	3,112	3,112
Total		\$ 92,783	\$ 107,723	\$ 124,590	\$ 143,923

FY 2006

Category	Description	Grade			
		12	13	14	15
11.1	Full-time permanent	\$ 62,927	\$ 74,830	\$ 88,429	\$ 104,016
12.1	Personnel Benefits	17,619	20,952	24,760	29,124
23.3	Communications	1,757	1,937	1,937	1,937
25.0	Investigations	6,898	6,898	6,898	6,898
25.0	Payroll	93	93	93	93
25.0	Drug Testing	109	109	109	109
25.0	IRM Training	988	988	988	988
25.0	Recruitment	604	604	604	604
31.0	Network-Enterprise	1,378	1,378	1,378	1,378
31.0	Network-Installation	3,112	3,112	3,112	3,112
Total		\$ 95,485	\$ 110,902	\$ 128,308	\$ 148,259

Modular costs used for new positions for FY 2007:

FY 2007

Category	Description	Grade			
		12	13	14	15
11.1	Full-time permanent	\$ 64,941	\$ 77,224	\$ 91,259	\$ 107,344
12.1	Personnel Benefits	18,182	21,623	25,552	30,056
23.3	Communications	1,792	1,976	1,976	1,976
25.0	Investigations	7,036	7,036	7,036	7,036
25.0	Payroll	94	94	94	94
25.0	Drug Testing	111	111	111	111
25.0	IRM Training	1,008	1,008	1,008	1,008
25.0	Recruitment	617	617	617	617
31.0	Network-Enterprise	1,378	1,378	1,378	1,378
31.0	Network-Installation	3,112	3,112	3,112	3,112
Total		\$ 98,272	\$ 114,179	\$ 132,143	\$ 152,733

Costs for FY 2002 through FY 2005 (includes cost associated with processing certifications):

	GS Level	FY 2002		FY 2003		FY 2004		FY 2005	
		# of Pos.	PS&B						
Program Support:									
INS Personnel -									
Director	15	1.0	\$ -	1.0	\$ 134,168	1.0	\$ 138,455	1.0	\$ 142,980
Deputy Director	15	1.0	-	1.0	137,335	1.0	141,724	1.0	146,353
Branch Chief	15	-	-	3.0	358,284	5.0	620,350	6.0	770,080
Program Admin Assistant	7	1.0	-	1.0	48,048	1.0	49,579	1.0	51,260
Clerk	4	1.0	-	1.0	29,339	-	-	-	-
Secretary	8	1.0	-	1.0	56,462	1.0	58,262	1.0	60,221
Perm Adjudication Officer	14	27.0	-	30.0	3,223,494	32.0	3,539,612	33.0	3,765,964
Perm Adjudication Officer	13	1.0	-	3.0	259,299	4.0	357,911	4.0	369,939
Perm Adjudication Officer	12	2.0	-	4.0	301,244	4.0	311,258	4.0	321,594
Term Adjudication Officer	14	3.0	-	3.0	315,350	3.0	325,422	3.0	336,118
Term Adjudication Officer	13	1.0	-	1.0	92,018	1.0	94,957	1.0	98,089
Term Adjudication Officer	12	-	-	-	-	-	-	-	-
I-17 Adjudication Officer	14	-	-	-	-	3.0	318,834	5.0	549,274
I-17 Adjudication Officer	13	-	-	-	-	2.0	179,868	4.0	371,834
I-17 Adjudication Officer	12	-	-	-	-	-	-	-	-
Subtotal INS Personnel		39.0	\$ 3,630,000	49.0	\$ 4,955,041	58.0	\$ 6,136,232	64.0	\$ 6,983,706
Contractor Personnel -									
Supervisory Clerical (LABAT)	N/A	1.0	\$ 41,618	1.0	\$ 42,950	2.0	\$ 101,368	2.0	\$ 104,612
Office Applications (LABAT)	N/A	1.0	51,291	1.0	52,932	2.0	106,424	2.0	109,830
Document Management (LABAT)	N/A	6.0	140,959	8.0	235,843	8.0	243,389	9.0	299,303
Technical Support	N/A	1.3	125,000	1.3	134,160	1.3	138,453	1.3	142,884
Subtotal Contractors		9.3	\$ 358,868	11.3	\$ 465,885	13.3	\$ 589,634	14.3	\$ 656,629
Total Personnel		48.3	\$ 3,988,868	60.3	\$ 5,420,926	71.3	\$ 6,725,866	78.3	\$ 7,640,335

FY 2003/2004 projected volume by classification is as follows:

Completed	FY 2003/2004	
	Amount	% of Total
Appeals	31,190	88%
Motions	2,810	8%
Certifications	1,461	4%
Total	35,461	100%

6 APPENDIX C – ACRONYMS

Acronym	Title
AAO	Administrative Appeals Office
ADN	Adjudications Division
BIA	Board of Immigration Appeals
CFO	Chief Financial Officer
CLAIMS	Computer Linked Applications and Information Management System
DO	District Office
FASAB	Federal Accounting Standards Advisory Board
FY	Fiscal Year
GE	General Expenses
GPRA	Government Performance and Results Act
GS	General Schedule
HQ	INS Headquarters
IEFA	Immigration Examinations Fee Account
INS	Immigration and Naturalization Service
IOAA	Independent Offices Appropriation Act
O&O	Operations & Overhead
OMB	Office of Management and Budget
OPP	Office of Policy and Planning
PAS	Performance Analysis System
PS&B	Personnel Salary & Benefits
ROP	Record of Proceeding
SC	Service Center
Service	Immigration and Naturalization Service
SEVP	Student and Exchange Visitor Program
SME	Subject Matter Experts