

Backlogs in Immigration Processing Persist

Over the last fifteen years, the number of pending applications for immigration benefits has swollen by over 1,000 percent, growing from 540,688 in 1990 to a high of 6.08 million in 2003.¹ The body of applications caught in protracted processing delays, or the backlog, as it is commonly known, has been a chronic problem for the US immigration system, with implications for immigrants, their families, employers who sponsor them, and policymakers.

The US Citizenship and Immigration Services (CIS) bureau of the Department of Homeland Security (DHS) has launched a Backlog Reduction Plan to address the issue, but it remains uncertain whether the measures included in the plan are sufficient to achieve its goal of a six-month standard processing time for all applications by 2006.

The growth of the undocumented immigrant population (estimated at between eight and eleven million people) and the dependence of major sectors of the US economy on undocumented labor are prompting a debate over the merits of opening wider paths to legal immigration. CIS's capacity to effectively process a new surge in applications for legal status is cited as a crucial consideration and constraint.

The backlog problem has acquired new importance in recent years, in part owing to the growing electoral clout of ethnic communities. In the 2000 elections, both George W. Bush and Al Gore promised to address the backlog problem; similar promises were made by Bush and John Kerry in 2004.

The backlogs' importance is also tied to the substantially heightened, resource-intensive, and time-consuming security precautions initiated in the aftermath of the September 11 terrorist attacks. These measures have increased delays and hampered backlog-reduction efforts.

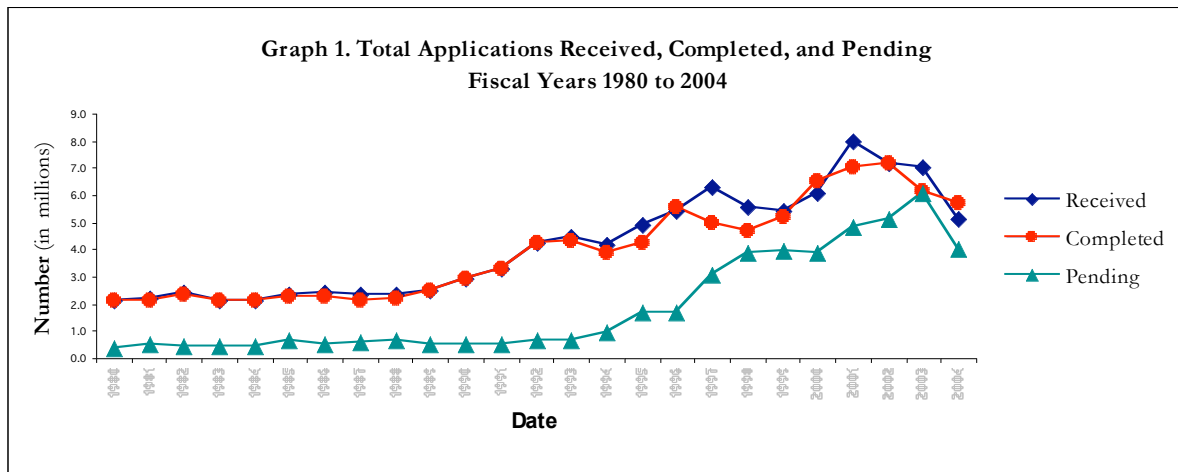
Background

The number of applications for immigration benefits received by the Immigration and Naturalization Service (INS) and its successor agencies in DHS more than doubled from 2.96 million to 7.05 million between 1990 and 2003, an increase of 138 percent.

¹ The most recent figure for the overall backlog of pending applications is approximately 4 million for the 2004 fiscal year. However, it is difficult to ascertain how great an improvement this represents over the previous fiscal year's backlog of 6.08 million, as CIS modified the way it counts applications. Instead of counting beneficiaries of applications as in the past, they now count applications (which may include multiple beneficiaries). How much of the apparent reduction in pending applications is due to this change in accounting methods is uncertain.

The steep rise in the backlog began with an increase in the number of applications for immigration benefits resulting from the 1986 Immigration Reform and Control Act (IRCA). Approximately three million applications for residency status were approved under IRCA, which provided a basis for undocumented immigrants to legalize their status, provided they met certain criteria. This placed continuing demands on the INS as the beneficiaries of the IRCA program became eligible first for permanent resident status, then for citizenship, and finally for the right to file petitions for immigration of their family members.

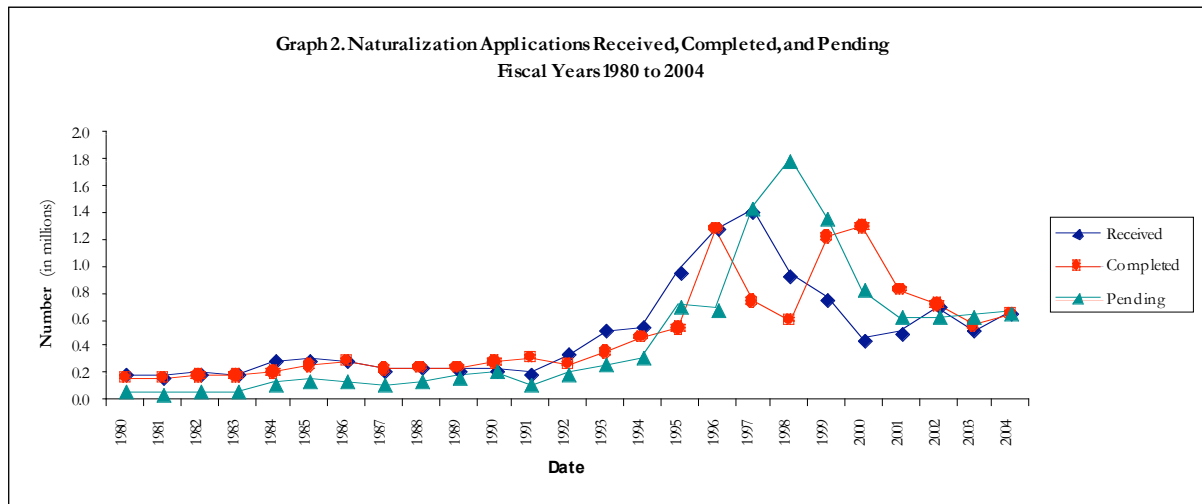
By 1992, nearly all of the three million eligible immigrants had attained permanent resident status, without an appreciable increase in the backlog. However, after 1992, the first of the IRCA beneficiaries became eligible to apply for naturalization, and subsequently to file petitions on behalf of their family members. The INS began to fall behind and the backlog began to grow because of a convergence of circumstances, some of which the agency was able to anticipate and plan for, and some which could not be foreseen. (See Graph 1)



Source: Office of Immigration Statistics, Department of Homeland Security, G-22.2 Adjudication Summary Report and G-22.3 Naturalization Summary Report. Total completed is the sum of approved and denied. Data are current as of November 2004. Note that counts of the last three years may fluctuate upwards or downwards due to revisions.

Contributions to the Backlog

Naturalization caseload. The greatest contributor to the backlog has been the dramatic increase in the number of naturalization applications. Between 1992 and 1997, the number of naturalization applications filed nearly quadrupled, from 385,000 to 1.5 million, an increase of 295 percent. While the INS initially kept pace with the increased flow of applications, after 1994, the number of pending citizenship applications began to increase dramatically, growing from 334,000 in 1994 to 1.9 million by 1998, a 486 percent increase. (See Graph 2)



Source: Office of Immigration Statistics, Department of Homeland Security, *G-22.3 Naturalization Summary Report*. Total completed is the sum of approved and denied. Data are current as of October 2004. Note that counts of the last three years may fluctuate upwards or downwards due to revisions.

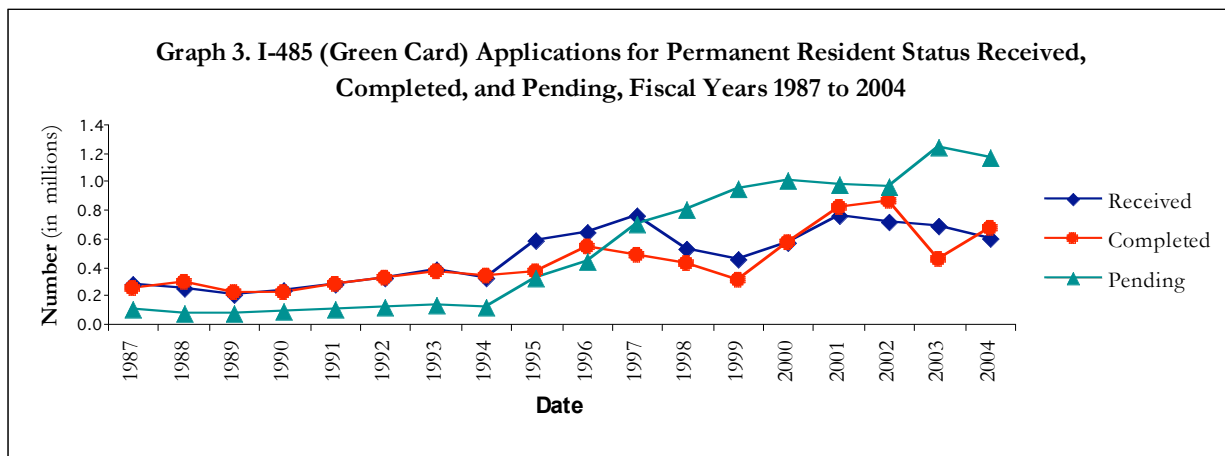
Factors contributing to the growth of the naturalization caseload included:

- **Green card replacement program.** Historically, permanent resident alien cards, or green cards, had neither expiration dates nor security devices. To make green cards more secure, an initiative was launched in the early 1990s requiring all green card holders to turn in their old documents and apply for new ones by March 1996. As the fee for green card replacement was nearly the same as the fee for naturalization, many long-time permanent residents opted to naturalize rather than renew. This added to the number of applications for citizenship.
- **Proposition 187.** This California referendum passed in November 1994. It denied unauthorized immigrants access to public education, medical care, and a variety of other social services. It required local law enforcement officials to turn suspected unauthorized immigrants over to the INS and stipulated that public employees had to report suspected unauthorized immigrants. Proposition 187 was never implemented as its provisions were ultimately overturned as unconstitutional. Nonetheless, the debate over the measure received widespread national attention, sparking concern among immigrants and inspiring those who could to place themselves beyond its reach by naturalizing.
- **1996 Legislation.** The number of new and pending applications peaked as a result of three legislative measures (see below) enacted in 1996 that directly affected immigrants residing in the United States and encouraged those without citizenship to naturalize.
 - *The Anti-Terrorism and Effective Death Penalty Act* (AEDPA), signed into law on April 24, 1996, made it substantially easier to arrest, detain, and deport non-citizen immigrants by providing for the automatic deportation of immigrants who had committed an “aggravated felony.” The definition of aggravated felony was expanded to include a greater number of infractions and judicial review was restricted.
 - *The Personal Responsibility and Work Opportunity Reconciliation Act* (PRWORA), commonly known as the Welfare Reform Act, was signed into law on August 22, 1996. It denied public benefits, such as Medicaid, Supplemental Security

Income (SSI), and food stamps, to legal immigrants who had previously been eligible to receive them. This created an incentive to naturalize and regain benefit eligibility. PRWORA also required that sponsors of immigrants sign a binding Affidavit of Support, pledging to support the immigrant until naturalization, adding another motivation to naturalize as soon as possible.

- *The Illegal Immigration Reform and Immigrant Responsibility Act* (IIRIRA), signed on September 30, 1996, restricted judicial review of a range of executive branch decisions on both legal and undocumented immigrants and hastened deportation for criminal infractions.

Permanent residency caseload. A parallel trend has been taking place with applications for adjustment of status to permanent residency, or green card applications, and for much the same reasons. Between 1994 and 2003, the number of pending green card applications grew by an unprecedented 920 percent, from 125,000 pending applications in 1994 to 1.2 million in 2003. The number of applications began to grow in the wake of IRCA’s passage, as previously undocumented aliens acquired a basis upon which to legalize their status. The number of adjustment of status applications filed with the INS more than tripled during the early and mid-1990s, increasing from 240,000 in 1990 to 760,000 in 1997, or by 216 percent.



Source: Office of Immigration Statistics, Department of Homeland Security, *G-22.2 Adjudication Summary Report*. Total completed is the sum of approved and denied. Data are current as of November 2004. Note that counts of the last three years may fluctuate upwards or downwards due to revisions.

The stiffened penalties for immigrants lacking legal status provided a strong motivation for anyone whose lawful status was in doubt to take whatever steps were available to secure lawful immigration status. Their ability to do so was aided by the amendment in 1994 of Section 245(i) of the Immigration and Nationality Act. It allowed immigrants within the US who were eligible for permanent residency but who lacked lawful status (through having overstayed their non-immigrant visas or having entered the US without inspection) to adjust their status to legal permanent residency by paying a heavy penalty fee. Section 245(i) expired in November 1997, but it resulted in a substantial increase in the number of adjustment of status applications filed between 1994 and 1997.

In addition to the policies that caused an increase in the number of naturalization applications, the priority given to naturalization and its re-engineering reduced resources available for green card adjudications. This led to further escalation of the adjustment case backlog.

Responses

The backlog was an important political issue even before September 11, 2001. In 2000, Congress passed the Immigration Services and Infrastructure Improvements Act (Title II of PL106-313) which charged the Attorney General with developing a Backlog Elimination Plan and stipulated a six-month standard processing time for immigration applications to be achieved within one year of the date of enactment. In 2001, President Bush requested an appropriation of \$500 million for the INS to be applied over five years for eliminating the backlog. In March 2002, the INS announced the abovementioned Backlog Elimination Plan, with the goal of a uniform six-month processing time for all applications by 2006. The plan's implementation was almost immediately interrupted by the elimination of the INS and the reassignment of its functions to the newly formed DHS.

Citizenship USA

The first major initiative to reduce the naturalization backlog, announced on August 31, 1995, was Citizenship USA (CUSA). The INS had projected the waiting time for citizenship applications to reach three years by 1996. The goal of CUSA was to reduce the processing time to less than six months. The INS increased its naturalization workforce in key cities, opened new offices dedicated to naturalization adjudication, and implemented new processing strategies to streamline the process.

The program achieved a six-month processing time and the number of naturalization applications adjudicated rose from 550,000 to 1.4 million, or 151 percent, from September 1995 through September 1996. However, CUSA foundered when a number of people with criminal backgrounds were found to have been improperly granted citizenship.

In response, the INS in November 1996 implemented new quality-control safeguards to ensure proper security check procedures. The re-engineering process led to a significant drop in the number of applications processed, to a low of 687,000 in 1998, and a commensurate increase in the backlog, which grew from 1.6 million pending applications in 1996 to 3.8 million in 1998.

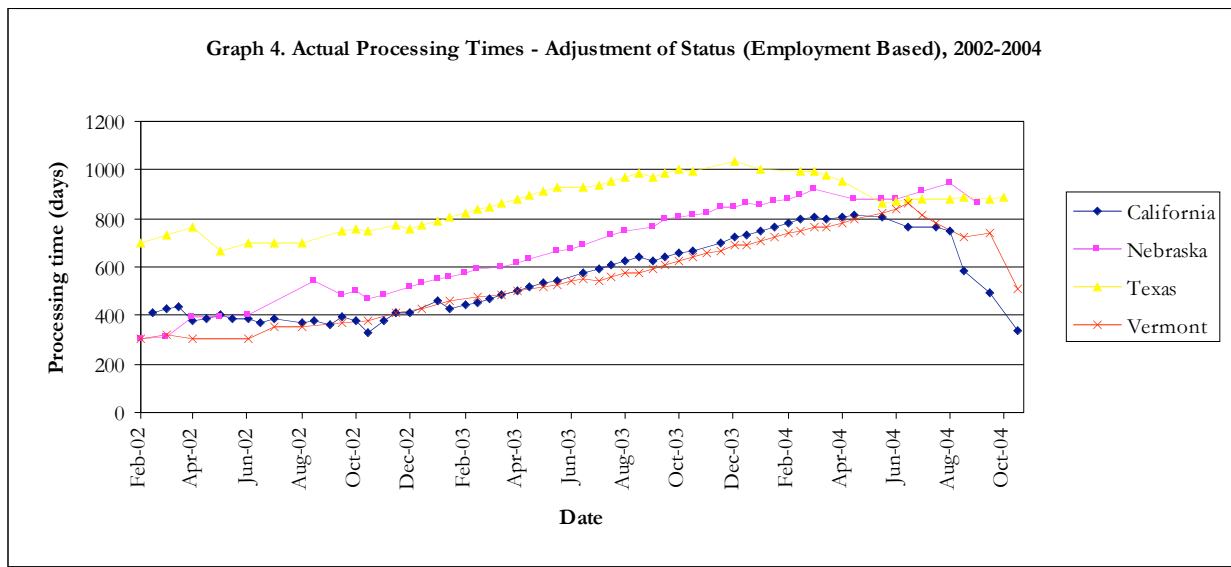
In addition, new security measures created in the wake of the September 11 terrorist attacks required extensive additional resources that were not contemplated in the original plan's design. New programs, such as the National Security Entry-Exit Registration System (NSEERS) and the Student Exchange Visitor Information System (SEVIS), introduced new security checks. Such measures greatly increased the processing time needed for applications. Finally, substantial numbers of adjudicators were assigned to special, post-9/11 anti-terrorism programs, such as special registration, further reducing resources devoted to case processing. These factors led to the surge in pending applications that has occurred over the past two years, which represents the largest pending caseload yet.

Where We Are Today

The Citizenship and Immigration Services bureau of DHS came into being on March 1, 2003. Among the reasons it was created was to allow for better organizational focus on processing immigration applications. In a June 2004 report to Congress, CIS Director Eduardo Aguirre outlined an updated version of the original Backlog Elimination Plan. The updated plan, now in effect, stresses technological and procedural improvements to increase productivity. It includes the following:

- **Digital storage of biometrics**, such as fingerprints, photographs, and signatures; eliminates the need for applicants to reappear at application service centers and repeatedly provide fingerprints or signatures, saving time for both applicants and CIS staff.
- **Online case status checking** and the Infopass online appointment system reduce the level of staffing at CIS calling centers and field offices needed to handle routine status inquiries.
- Applications may now be **filed online electronically**. However, there is no way of electronically filing the required supporting documentation, which must be mailed separately and then matched with the application file.
- The **Decision at First Review** procedure is intended to reduce the number of requests for additional or updated evidence made by officers during the adjudication process. Under this measure, guidance is provided to enable officers to adjudicate cases without having to resort as frequently to requests for updated evidence. While a broad consensus exists that delays associated with requests for evidence need to be addressed, some immigrant advocacy groups have expressed concern that Decision at First Review could lead to precipitous denials of qualified cases, producing an increase in cases sent to the Board of Immigration Appeals. BIA already has a backlog of approximately 33,000 cases pending review.
- The plan includes an **extension of the validity period** of employment authorization documents (EADs) from one year to five years, eliminating the need for multiple filings for employment authorization while an underlying application is being adjudicated. In their *Immigration Monthly Statistical Report* for September 2004, CIS reported receipt of 45,817 I-485 permanent resident adjustment applications and 104,747 employment authorization applications.

As previously mentioned, the extent to which these new policies have impacted the overall number of backlogged application is uncertain, as their implementation coincides with changes in the accounting practices by which CIS tallies backlogged applications (see footnote on page 1). However, the data below (*see Graph 4*), which is based upon average processing times at the national service centers, would seem to confirm that applications are being more speedily processed now than they have been in the past.



Source: CIS Service Center “Processing Time Reports,” published approximately semi-monthly, 2002-2004.

Conclusion

Today’s pending caseload of 4 million applications, although an improvement over the 6.1 million peak in 2003, remains extremely high. The government has recognized the implications of the backlog and has taken some promising preliminary steps towards addressing the problem. However, neither the magnitude and dynamic nature of the problem, nor the resources needed to resolve it, should be underestimated. National security and the need for timely service both constitute an obligation for a more efficient system.

Additional Resources

US Department of Homeland Security, *Yearbook of Immigration Statistics, 2003*, US Government Printing Office: Washington, DC, 20003. The entire publication is available online at: <http://uscis.gov/graphics/shared/aboutus/statistics/ybpage.htm>

US Government Accounting Office, *Immigration Application Fees: Current Fees Are Not Sufficient to Fund US Citizenship and Immigration Services’ Operations*. Report to Congress, available online at: <http://www.gao.gov/new.items/d04309r.pdf>

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For more information on the migration policies of the United States and worldwide, visit the Migration Information Source, MPI’s online publication, at www.migrationinformation.org. The Source provides fresh thought, authoritative data from international organizations and governments, and global analysis of international migration trends.

Table 1. All Applications				Table 2. N-400 Applications for Naturalization			
Total, with both Adjustment & Naturalization							
Fiscal Year	Received	Completed	Pending	Fiscal Year	Received	Completed	Pending
1980	2,153,622	2,112,248	389,417	1980	192,230	162,308	63,404
1981	2,203,591	2,118,325	498,713	1981	171,073	170,633	56,125
1982	2,401,253	2,360,008	424,997	1982	201,507	177,682	68,351
1983	2,147,765	2,149,762	452,041	1983	187,719	182,108	66,025
1984	2,118,232	2,107,992	408,064	1984	286,440	200,396	122,848
1985	2,353,302	2,257,575	628,997	1985	305,981	248,327	147,372
1986	2,411,175	2,237,563	498,320	1986	290,732	286,603	138,974
1987	2,373,348	2,096,902	584,173	1987	232,988	233,779	118,037
1988	2,370,291	2,193,086	623,682	1988	237,752	246,367	142,219
1989	2,508,677	2,524,186	534,630	1989	227,692	238,977	172,601
1990	2,963,104	2,919,481	540,688	1990	233,843	276,617	213,843
1991	3,313,467	3,277,863	533,006	1991	206,668	314,326	115,181
1992	4,234,919	4,207,944	656,065	1992	342,269	259,545	199,385
1993	4,498,017	4,288,528	679,982	1993	522,298	354,612	269,192
1994	4,137,670	3,911,692	987,484	1994	543,353	474,668	314,236
1995	4,878,930	4,265,446	1,667,606	1995	959,963	534,155	705,266
1996	5,447,097	5,546,808	1,651,850	1996	1,277,403	1,274,531	684,069
1997	6,276,857	4,953,549	3,050,701	1997	1,412,712	728,901	1,440,396
1998	5,562,645	4,692,685	3,891,207	1998	932,957	600,455	1,802,902
1999	5,398,594	5,219,469	3,972,785	1999	765,346	1,219,937	1,355,524
2000	6,058,298	6,487,304	3,892,034	2000	460,916	1,288,458	817,431
2001	7,949,551	7,046,057	4,815,869	2001	501,646	826,531	618,750
2002	7,137,988	7,201,597	5,090,801	2002	700,649	713,847	623,519
2003	7,052,886	6,154,655	6,079,109	2003	523,408	554,803	627,270
2004	5,130,610	5,675,290	4,054,913	2004	662,788	639,337	653,190

Table 3. I-485 Applications for Permanent Residence

Fiscal Year	Received	Completed	Pending	
1987	280,815	241,238	108,552	
1988	254,816	293,258	71,122	
1989	208,374	214,886	71,421	
1990	240,187	225,984	81,019	
1991	279,375	270,883	98,649	
1992	327,856	326,113	120,353	
1993	385,547	368,493	125,253	
1994	317,164	341,759	121,067	
1995	577,719	357,567	320,730	
1996	646,585	541,867	435,250	
1997	759,500	477,974	699,332	Source:
1998	527,453	416,392	808,507	Office of Immigration Statistics,
1999	456,233	299,890	950,987	Department of Homeland Security
2000	562,021	564,131	1,001,479	G-22.2 Adjudication Summary Report and
2001	754,133	821,554	971,866	G-22.3 Naturalization Summary Report
2002	710,244	861,855	967,249	Total completed is the sum of approved and denied.
2003	686,144	455,707	1,234,812	Data are current as of November 2004.
2004	591,490	664,097	1,162,205	<i>Counts for last three years may fluctuate due to revisions.</i>