AILA Policy Brief: Crisis Level USCIS Processing Delays and Inefficiencies Continue to Grow
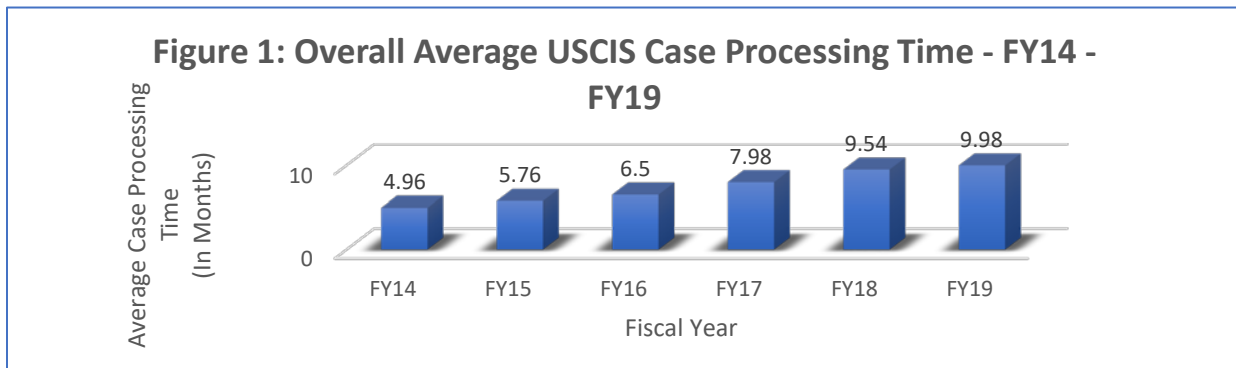
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Last year, the American Immigration Lawyers Association (AILA) released an analysis of the U.S. Citizenship and Immigration Services (USCIS) backlog[1] and case processing delays based on the agency's published data.[2] The data revealed crisis-level delays in the agency's adjudication of applications, petitions, and other requests.[3] This analysis resulted in AILA's recommendation for the agency to return to its congressionally mandated roots by rescinding needlessly burdensome policies that have resulted in higher average processing times, strengthening Congressional oversight, and increasing public visibility into it operations and data. One year later, USCIS has released data on overall processing times and case volume for FY19.[4] The new data reveals that the agency is continuing to move in the wrong direction, as overall average case processing times rose another **5 percent** in FY19, despite a **10 percent** decrease in cases from the end of FY17 through FY19.[5] This persistent rise demonstrates that urgent action to reverse course is necessary.

Updated Findings on Overall FY19 Processing Delays

Overall average processing times continued to climb in FY19, compounding the crisis level delays that AILA detailed in early 2019.[6] As shown in Figure 1, according to recent data:

- The overall average case processing times surged by about **25 percent** from the end of FY17 and **5 percent** since the end of FY18.[7].
- This is despite a **10 percent** drop in cases received from the end of FY17 through FY19.[8]
- Overall average case processing time has now risen by **101 percent** from FY14 through FY19.

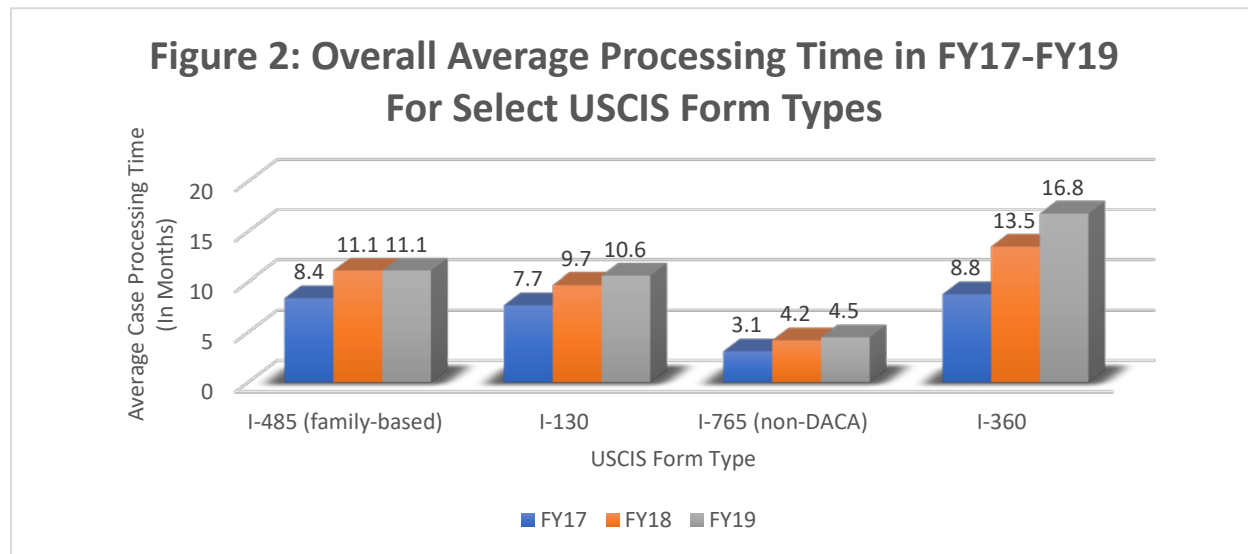Figure 1: Overall Average USCIS Case Processing Time - FY14 - FY19

Source: AILA analysis of data from USCIS webpage, "Historical National Average Processing Times for All USCIS Offices" (last accessed February 21, 2020); https://egov.uscis.gov/processing-times/historic-pt

Certain form types mentioned in AILA's January 30, 2019 policy brief have improved in average overall processing time.[9] For example, the overall average processing time for Form N-400, *Application for Naturalization* remains high at 9.9 months, but has decreased by roughly **4 percent**. The overall average processing time for the non-premium filed Form I-140, *Immigrant Petition for Alien Worker*, dropped by **32 percent** to 5.3 months. It is unclear to what extent the agency devoted resources to these specific forms throughout FY19.

Despite these decreases, a review of USCIS data shows that **57 percent** of listed form types had average processing times rise or remain the same as the staggeringly high levels for FY18. Figure 2 shows the year to year comparison for several forms from FY17 through FY19. The overall average processing time for family-based Form I-485 *Application to Register Permanent Residence or Adjust Status*, remained high in FY19 at 11.1 months, a **32 percent increase** from FY17. Overall average processing time for the Form I-765 *Application for Employment Authorization* continued to increase in FY19, climbing **7 percent** to 4.5 months, a **45 percent** increase since FY17. The I-130 *Petition for Alien Relative* rose an additional **9 percent** from the end of FY18 through FY19, and **38 percent** since FY17. Lastly, the Form I-360, *Petition for Amerasian, Widow(er) or Special Immigrant*, commonly utilized by vulnerable populations, continued what has been a dramatic increase in overall average processing time, growing **24 percent** in FY19 alone, and **91 percent** since FY17.

This is indicative of an agency failing to provide adequate services to its stakeholders despite a **10 percent** decrease in the number of forms received since FY17.
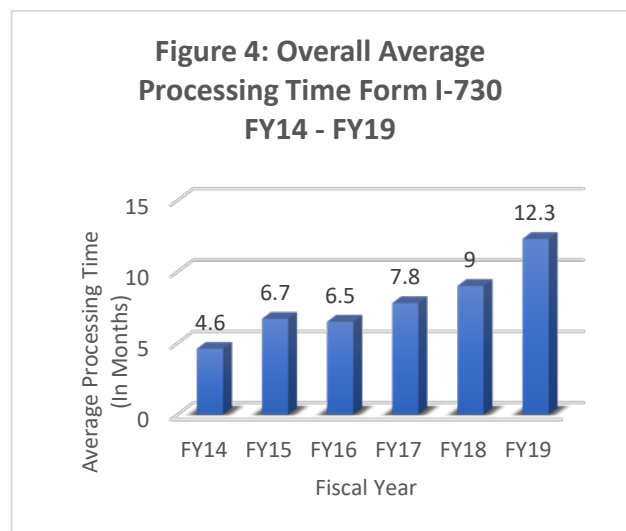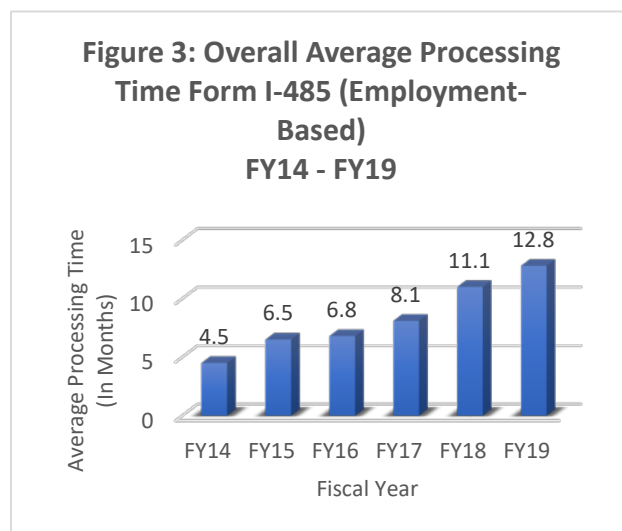

Figure 2: Overall Average Processing Time in FY17-FY19 For Select USCIS Form Types

Source: AILA analysis of data from USCIS webpage, "Historical National Average Processing Times for All USCIS Offices" (Last accessed February 21, 2020); https://egov.uscis.gov/processing-times/historic-pt

Contributors to Processing Delays

An example of a USCIS policy change directly responsible for the rise in average processing time is the in-person interview requirement for all employment-based Forms I-485 and Forms I-730, *Refugee/Asylee Relative Petition*. This policy compels already overburdened local USCIS officers to interview all employment-based adjustment applicants and refugee and asylee relatives before a case

can be fully adjudicated. By contrast, prior to October 1, 2017, the need to interview these applicants was previously conducted on a case-by-case basis.[10] In an April 2019 letter, USCIS expressly acknowledged that these new requirements have resulted in lower "completions per hour" for these case types given the additional time required for the interviews.[11] The failure to consider the operational impact of policy decisions directly exacerbates processing times.

The significant increase in work for each case correlates with a skyrocketing average processing time for employment-based Form I-485 adjustment of status applications and Form I-730 refugee/asylee relative petitions. Two year after the policy was implemented (the beginning of FY18 to the end of FY19), average processing times on these applications have risen **58 percent; 15 percent** in FY19 alone**.** The same is shown by the jump in overall average processing time for the Form I-730, which has also risen **58 percent** from the beginning of FY18, and **37 percent** from the beginning of FY19. Figures 3 and 4 document the meteoric rise of processing times for these applications, a **184 percent** and **167 percent** jump respectively since the end of FY14.

Figure 3: Overall Average Processing Time Form I-485 (Employment-Based) FY14 - FY19

Figure 4: Overall Average Processing Time Form I-730 FY14 - FY19

Source: AILA analysis of data from USCIS webpage, "Historical National Average Processing Times for All USCIS Offices" (Last accessed February 21, 2020); https://egov.uscis.gov/processing-times/historic-pt

Another policy creating mayhem for stakeholders is an October 2019 USCIS policy strictly requiring the rejection of applications and petitions from asylum seekers and victims of criminal activity if any fields are left blank on the form.[12] AILA has received over 140 member examples documenting trivial reasons for which applications for asylum were rejected by USCIS. For example, a person may have their application rejected for leaving an unrelated field blank instead of marking it "N/A.". These rejections needlessly delay applications for vulnerable individuals and expend valuable resources that could be spent improving adjudication efficiency.

Continued Consequences of Severe Processing Delays

The consequences of these growing delays continue to be critical for U.S. businesses, families, and vulnerable populations. Individuals and their families continue to face increased delays in obtaining work and travel authorization and securing status for themselves and their loved ones. These delays

breed anxiety and fear, and often come with personal and financial consequences. U.S. businesses often work at decreased staffing levels while work authorization applications remain pending. Businesses are also waiting for extended periods of time for clearly approvable petitions for high-skilled workers to be adjudicated. Lastly, vulnerable individuals who have already suffered traumatic experiences are kept in limbo with excessive delays caused by inefficient policies.

Even worse, instead of working to reduce its own inefficient policies and processes, USCIS is instead seeking to pass the cost of its inefficiency onto its stakeholders. In November 2019, USCIS proposed significant increases to its fee schedule.[13] Under the proposed rule, fees could increase by a weighted average of **21 percent** overall.[14] Fees for high volume case types, such as green card applications, when filed with applications for employment authorization and permission to travel, and naturalization applications, could increase at least **75 percent** and **80 percent** respectively.[15] Instead of working to reduce inefficiency, the agency is continuing to implement harmful, unnecessary, and time-intensive policies and increasing the cost of its services in order to supplement them. These fee increases represent yet another barrier for families, businesses, and vulnerable populations making it prohibitive to obtain benefits through USCIS.

AILA Recommendations

As processing delays and the USCIS backlog have continued to rise, it is all the more important that steps to be taken to hold USCIS accountable for inefficient practices and procedures causing ever-increasing crisis-level processing delays and ensure good governance. AILA recommends the following:

> **Robust Congressional Oversight.** Over the past year, Congress has provided valuable oversight of USCIS and examined its growing backlog of cases and extensive processing delays. AILA urges Congress to continue its oversight of the agency and pass the bipartisan Case Backlog and Transparency Act of 2020 introduced by Representative Tony Cardenas (D-CA) and Representative Steve Stivers (R-OH) on February 26, 2020. The bill addresses USCIS's case processing delays and establishes new reporting requirements that would increase transparency into the causes of, and potential solutions for, the backlog. In doing so, the bill would promote timelier adjudications that align with USCIS's mandate to serve the needs of American companies and families.

> **Rescission of USCIS policies that exacerbate processing delays**. AILA urges USCIS to rescind policies such as the in-person interview requirement for employment-based I-485 and I-730 applications. These policies, along with others are delaying the adjudication of cases and diverting critical agency resources away from being able to reduce the growing backlog and processing delays.

[1] Backlog in this case, is the equivalent of what the Department of Homeland Security (DHS) considers "net backlog". DHS defines USCIS's "gross backlog" as the number of cases pending outside the "target cycle time period," i.e., the agency's processing time goals. USCIS's "net backlog" is the "gross backlog" minus cases not in "active suspense categories"—that is, not presently actionable—such as cases in which a "Request for Evidence" has been issued to the applicant or petitioner and a response remains pending. For more information, see DHS, "Annual Report on the Impact of the Homeland Security Act on Immigration Functions Transferred to the Department of Homeland Security" (Apr. 13, 2018) https://www.uscis.gov/sites/default/files/reports-studies/Annual-Report-on-the-Impact-of-the-Homeland-Security-Act-on-Immigration-Functions-Transferred-to-the-DHS.pdf

[2] *See* AILA Policy Brief: USCIS Processing Delays Have Reached Crisis Levels Under the Trump Administration, available at: https://www.aila.org/advo-media/aila-policy-briefs/aila-policy-brief-uscis-processing-delays

[3] Id.

[4] *See* Historical National Average Processing Time for All USCIS Offices, available at: https://egov.uscis.gov/processing-times/historic-pt

[5] Please note that the data cited throughout this brief has been rounded to the nearest whole number.

[6] Please note that this data is subject to change. When releasing new statistics on the "Historic National Average Processing Time for All USCIS Offices" page, USCIS will occasionally update data from a previous fiscal year to reflect updated information that it has received.

[7] AILA reached these figures by calculating the mean average of the processing times for each of the 42 form types listed in FY 2017 and FY 2018, then measuring the difference between each respective average and the equivalent average for FY 2019 (due to the unavailability of certain data, this figure does not take into account the volume of case receipts associated with each form type assessed). AILA uses the same methodology when making other "overall average case processing time" calculations.

[8] AILA draws from USCIS's regularly updated "All USCIS Application and Petition Form Types" for data on case receipt volume. *See* USCIS webpage, "Immigration and Citizenship Data;" available here: https://www.uscis.gov/tools/reports-studies/immigration-forms-data?topic_id=23035&field_native_doc_issue_date_value%5Bvalue%5D%5Bmonth%5D=&field_native_doc_issue_date_value_1%5Bvalue%5D%5Byear%5D=&combined=&items_per_page=10

These sources reflect some form types not listed in USCIS's national average processing times data, such as Form I-589. At the time of writing, the most recent publicly available "All USCIS Application and Petition Form Types" covered up through the fourth quarter of FY 2019.

[9] *See* Historical National Average Processing Time for All USCIS Offices, available at: https://egov.uscis.gov/processing-times/historic-pt

[10] *See* USCIS Webpage, "USCIS to Expand In-Person Interview Requirements for Certain Permanent Residency Applicants", available at: https://www.uscis.gov/news/news-releases/uscis-to-expand-in-person-interview-requirements-for-certain-permanent-residency-applicants

[11] *See* USCIS Responds to Letter from 86 House Members regarding Case Processing Delays, available at: https://www.aila.org/advo-media/whats-happening-in-congress/congressional-updates/uscis-responds-to-letter-from-86-house-members?utm_source=AILA+Mailing&utm_campaign=269675a9af-AILA8_04_26_2019&utm_medium=email&utm_term=0_3c0e619096-269675a9af-291864421c

[12] See Practice Pointer: USCIS Rejection of Form I-589 Due to Claimed Incompleteness, available here:

[13] *See* AILA and the Council Submit Comment Opposing Proposed Revisions to USCIS Fee Schedule, available here: https://www.aila.org/infonet/aila-council-comment-opposing-uscis-fee-schedule

[14] *See* USCIS Proposed Rule with Adjustments to Fee Schedule and Other Changes, available here: https://www.aila.org/advo-media/submit-feedback-notices-requests-for-comment/84-fr-62280-11-14-19

[15] *See* AILA and the Council Submit Comment Opposing Proposed Revisions to USCIS Fee Schedule, available here: https://www.aila.org/infonet/aila-council-comment-opposing-uscis-fee-schedule