

# Agencies That Affect Immigration Law

updated by Tahreem Kalam\*

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## INTRODUCTION

This article provides an overview of the various government agencies that play a role in the U.S. immigration process. Some of the agencies described play a primary role and others a more ancillary role. The U.S. Departments of Homeland Security (DHS), U.S. Department of Justice (DOJ), U.S. Department of State (DOS), and U.S. Department of Labor (DOL) all play a major role in the immigration process, while the Social Security Administration (SSA), Department of Health and Human Services (HHS), and the Internal Revenue Service (IRS) play a more limited role.

## U.S. DEPARTMENT OF HOMELAND SECURITY (DHS)

Among the many responses to the events of September 11, 2001, was the enactment of the Homeland Security Act of 2002.<sup>1</sup> This statute created DHS, a new cabinet-level government agency charged with protecting the “homeland” from a range of threats, from terrorist attacks to natural disasters. It restructured a host of governmental functions dealing with protecting the United States from within and even outside its borders and is one of the largest cabinet departments. President Joe Biden appointed Alejandro Mayorkas to serve as the seventh secretary of DHS; he was officially sworn in on February 2, 2021.

The creation of DHS constituted a massive governmental reorganization involving the merger of 22 governmental agencies into a single cabinet department. DHS absorbed the role of the legacy Immigration and Naturalization Service (legacy INS) and removed many immigration functions entirely from the DOJ. There are three principal agencies under DHS that affect immigration: U.S. Citizenship and Immigration Services (USCIS), U.S. Customs and Border Protection (CBP), and U.S. Immigration and Customs Enforcement (ICE).

## U.S. Citizenship and Immigration Services (USCIS)

According to its website, USCIS is the government agency that “upholds America’s promise as a nation of welcome and possibility with fairness, integrity, and respect for all we serve.” USCIS is led by Ur Mendoza Jaddou. Ur Mendoza Jaddou was appointed as the director of USCIS on August 3, 2021. She previously served as chief counsel at USCIS from June 2014 to January 2017.

USCIS is responsible for a broad range of adjudications, from petitions filed by U.S. employers to bring in needed workers, to family members seeking to bring close relatives to the United States. USCIS is responsible for granting refugee and asylum status and for granting lawful permanent residence. USCIS is also responsible for determining U.S. citizenship (a responsibility it shares with DOS), as well as granting naturalization. Together with the SSA, USCIS also oversees E-Verify, the internet-based system that allows participating employers to electronically verify the employment eligibility of newly hired employees. Currently, USCIS consists of 21,000 employees and contractors from 200 offices across the world. USCIS states that, on an average day, it adjudicates more than 32,500 requests for various immigration benefits. USCIS also states that it adjudicated more than 40,500 requests for various immigration benefits in fiscal year 2023.

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<sup>1</sup> Homeland Security Act of 2002, Pub. L. No. 107–296, 116 Stat. 2135.

### **U.S. Customs and Border Protection (CBP)**

CBP is the combination of the legacy INS border patrol, the U.S. Customs Service, and the U.S. Department of Agriculture’s Animal and Plant Health Inspection Service into one large, complex agency responsible for all land and air ports of entry. According to its website, CBP exists “[t]o safeguard America’s borders thereby protecting the public from dangerous people and materials while enhancing the Nation’s global economic competitiveness by enabling legitimate trade and travel.”

Therefore, CBP is responsible for securing and facilitating trade and travel, while enforcing hundreds of U.S. regulations, including immigration and drug laws. The agency is responsible for the inspection and admission of all individuals seeking to enter the United States at all points of entry. CBP also has expertise in preventing the introduction of insects that could harm U.S. agriculture as well as recognizing and preventing the entry of organisms that could be used for biological warfare or terrorism. While CBP’s presence is mainly seen at ports of entry, it also has representatives in U.S. embassies overseas.

### **U.S. Immigration and Customs Enforcement (ICE)**

ICE is the enforcement arm of DHS that, according to its website, is charged with protecting America from the cross-border crime and the illegal immigration that threatens national security and public safety. ICE investigates criminal networks and terrorist organizations and is responsible for many immigration enforcement actions, from workplace violations and human trafficking and harboring to visa abuse, document fraud, and detention and removal of undocumented immigrants. ICE agents conduct investigations aimed at protecting critical infrastructure industries vulnerable to sabotage, and the agency is responsible for protecting federal buildings within the United States. As the agency with the broadest law enforcement authority within DHS, ICE has aggressive intelligence and investigative operations in the nation’s interior and at the ports of entry. ICE works closely with law enforcement at the local, state, and federal levels and across international boundaries.

#### ***Enforcement and Removal Operations (ERO)***

Enforcement and Removal Operations (ERO) is a division of ICE that is responsible for detaining and removing certain aliens from the United States. According to the ICE website, ERO “manages all aspects of the immigration enforcement process, including identification and arrest, domestic transportation, detention, bond management, and supervised release, including alternatives to detention.”

#### ***Homeland Security Investigations (HSI)***

Homeland Security Investigations (HSI) is a division of ICE that investigates various matters such as document fraud, human trafficking, and cybercrimes. It is most well known in the immigration context for being the division responsible for Form I-9 audits, which can result in civil or criminal liability for employers.

#### ***Student and Exchange Visitor Program (SEVP)***

The Student and Exchange Visitor Program (SEVP) is a part of HSI’s National Security Investigations Division. It ensures that government agencies have essential data related to nonimmigrant students and exchange visitors to preserve national security. SEVP provides approval and oversight to schools authorized to enroll F and M nonimmigrant students and gives guidance to both schools and students about the requirements for maintaining their status. SEVP administers the Student and Exchange Visitor Information System (SEVIS), which is an internet-based system for maintaining information on nonimmigrant students and exchange visitors in the United States. DHS is required to collect current information from nonimmigrant students and exchange visitors continually during their course of stay in the United States. The information in SEVIS is accessible to other interested federal agencies, such as CBP and USCIS. SEVIS also maintains information on DOS-designated exchange visitor program sponsors and J-1 nonimmigrants.

### **U.S. DEPARTMENT OF JUSTICE (DOJ)**

Under the leadership of the attorney general, the stated mission of the Department of Justice is to: enforce the law and defend the interests of the United States; ensure public safety against foreign and domestic threats; provide federal leadership in preventing and controlling crime; seek just punishment for those guilty of unlawful behavior;

and ensure fair and impartial administration of justice for all Americans. Until 2003, these responsibilities included mostly law enforcement related to immigration. Legacy INS was an agency of DOJ and the attorney general was the final arbiter of many immigration-related questions. The establishment of DHS transferred a host of enforcement functions from the DOJ, which is now focused almost solely on immigration-related court proceedings.

### **Executive Office for Immigration Review (EOIR)**

The Executive Office for Immigration Review was created in 1983 to establish a separate agency independent of legacy INS. According to the DOJ website, EOIR's primary mission is to adjudicate immigration cases by fairly, expeditiously, and uniformly interpreting and administering the nation's immigration laws. EOIR includes the immigration judges presiding throughout the United States who adjudicate immigration cases involving detained and/or criminal foreign nationals, as well as those seeking relief from removal by various means (including asylum, waivers of inadmissibility, and cancellation of removal).

EOIR incorporates the Board of Immigration Appeals (BIA), which hears appeals from decisions rendered by immigration judges, as well as some decisions from DHS, in a wide variety of proceedings in which the U.S. government is one party and the other party is a noncitizen, a citizen, or a business. BIA decisions are binding on all parties, unless modified or overruled by the attorney general or a federal court.

Finally, the Office of the Chief Administrative Hearing Officer (OCAHO) is a part of EOIR and is presided over by administrative law judges who adjudicate issues arising under the employment verification laws, including cases relating to employers knowingly hiring unauthorized workers and failing to verify employment authorization. OCAHO judges also adjudicate immigration-related unfair employment practices and document fraud issues.

### **Immigrant and Employee Rights Section (IER)**

The Immigrant and Employee Rights Section, previously known as the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), is part of the Civil Rights Division of the DOJ and is responsible for enforcing the anti-discrimination provisions of the Immigration and Nationality Act (INA).<sup>2</sup> IER conducts outreach and educational programs aimed at teaching employers, potential victims of discrimination, and the general public about their rights and responsibilities. It operates employer and employee hotlines to quickly address questions. It also provides the public with Technical Assistance Letters (TALs) in which it responds to inquiries regarding anti-discrimination provisions.

### **Office of Immigration Litigation (OIL)**

The Office of Immigration Litigation was established in 1983 to handle civil immigration litigation before the federal district and appellate courts. OIL attorneys handle both affirmative and defensive cases before federal courts and are responsible for the nationwide coordination of immigration matters before the federal district courts and circuit courts of appeals. The Office of Immigration Litigation is divided into three functional sections: an Appellate Section, a District Court Section, and a Denaturalization Section.

## **U.S. DEPARTMENT OF STATE (DOS)**

DOS is the foreign affairs agency managing the diplomatic and international relations of the U.S. government. DOS has consular offices all over the world in U.S. embassies and consulates as well as oversight agencies in Washington, D.C.

### **Bureau of Consular Affairs**

The Bureau of Consular Affairs is the primary agency within DOS charged with issues relating to immigration. The Bureau of Consular Affairs provides passport services to U.S. citizens, issues visas to enter the United States, manages the Diversity Visa Lottery, and provides services to U.S. citizens abroad.

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<sup>2</sup> Immigration and Nationality Act of 1952, Pub. L. No. 82-414, 66 Stat. 163 (codified as amended at 8 USC §§1101 *et seq.*).

## **U.S. Consulates Overseas**

First and foremost among the functions of DOS relating to immigration is the role of consular officers at U.S. consulates around the world. Consuls have two principal functions: to assist and protect U.S. citizens abroad and to issue visas to foreign nationals who wish to come to the United States on either a temporary or permanent basis. Most decisions by consular officers regarding visas are not reviewable by U.S. courts. In Fiscal Year 2020, due to the global COVID-19 pandemic, many U.S. consulates were closed or open on a very limited capacity, and issuance of visas was placed on hold and limited to mission-critical and emergency services, resulting in less than 250,000 immigrant visas being issued. Consulates have reopened and are functioning at full or near-full capacity again, processing 493,448 immigrant visas and more than 6.8 million nonimmigrant visas in 2022, and processing 562,976 immigrant visas and more than 10 million nonimmigrant visas in 2023.

### **National Visa Center (NVC)**

In 1994, DOS opened a permanent immigrant visa processing facility known as the National Visa Center in Portsmouth, NH. The NVC processes approved immigrant visa petitions after they are received from USCIS and holds them until the cases are ready for adjudication by a consular officer abroad. In 2015, the NVC began handling all domestic inquiries from the public regarding nonimmigrant and immigrant visa cases.

### **Immigrant Visa Control and Reporting Division**

Every month, the Immigrant Visa Control and Reporting Division establishes the cut-off dates (or “priority dates”) that determine whether a beneficiary is eligible to apply for permanent resident status. This division makes its decision based on the visa demand for a given preference category and country of birth. Beneficiaries of an immigrant petition may wait several months or even years before their priority dates become current and they are eligible to apply for permanent resident status. To view the most current qualifying priority dates, refer to DOS’s *Visa Bulletin* page at <http://bit.ly/VisaBull>.

### **Kentucky Consular Center (KCC)**

The Diversity Visa (DV) lottery program is an annual program run by DOS, whereby individuals from countries with low rates of immigration can enter a lottery to secure one of 55,000 immigrant visas available in the lottery. It is most commonly known as the “DV Lottery.” The program is administered directly from the Kentucky Consular Center in Williamsburg, KY.

Additionally, the KCC is responsible for creating a Petition Information Management Service (PIMS) record for approved nonimmigrant visa petitions. Consular officers are then able to access PIMS to verify petition approval when processing visa applications abroad.

### **Visa Office**

The Office of Visa Services (Visa Office) interprets visa laws and regulations. The Visa Office also serves as liaison with DHS and U.S. embassies and consulates abroad regarding visas.

While consular officers make decisions on all findings of fact, an opinion regarding a point of law can be obtained from the Visa Office in Washington, D.C. Opinions are usually in response to a question of interpretation of immigration law from an embassy or consulate, but can also be issued following a request for review of a visa refusal by an applicant, or an attorney inquiry.

### **Bureau of Educational and Cultural Affairs (ECA)**

The Bureau of Educational and Cultural Affairs is part of the Public Diplomacy and Public Affairs branch of DOS. ECA’s mission is to “increase mutual understanding between the people of the United States and the people of other countries by means of educational and cultural exchanges that assist in the development of peaceful relations.” ECA hosts a variety of international professional, academic, cultural, and athletic programs. ECA is responsible for the DOS J-1 exchange visitor program.

## **U.S. DEPARTMENT OF LABOR (DOL)**

The U.S. Department of Labor has a specific role in the processing of employment-based nonimmigrant petitions and employment-based petitions for permanent residence. In addition, DOL works with DHS on workplace enforcement and immigration issues. The U.S. Department of Labor administers and enforces more than 180 federal laws. These mandates and the regulations that implement them cover many workplace activities for about 150 million workers and 10 million workplaces.

### **Employment and Training Administration (ETA)**

The Employment and Training Administration administers a variety of federal government job training and worker dislocation programs, federal grants to states for public employment service programs, and unemployment insurance benefits. ETA's self-proclaimed mission is "to contribute to the more efficient functioning of the U.S. labor market by providing high-quality job training, employment, labor-market information, and income maintenance services primarily through state and local workforce development systems."

### **Office of Foreign Labor Certification (OFLC)**

The Office of Foreign Labor Certification maintains a national office in Washington, D.C., and is supported by two national processing centers, which are located in Atlanta, GA, and Chicago, IL. The most common tasks of the OFLC involve the processing of labor condition applications (LCAs) for H-1B petitions, prevailing wage determinations for labor certification and for certain nonimmigrant petitions (H-2B, H-1B, H-1B1, H-1C, and E-3), and labor certifications for permanent residence through Program Electronic Review Management (PERM). The general purpose of filing these applications with OFLC is to protect the interests of U.S. workers. For example, to obtain a PERM labor certification, an employer must file a form with ETA that certifies there are no qualified and available U.S. workers to perform the job proposed. With respect to the LCA, the employer generally is required to make attestations that wages paid to foreign workers meet DOL's prevailing wage, and that hiring a foreign worker will not adversely affect the working conditions of workers similarly employed.

In 2018, OFLC undertook a modernization effort to replace its legacy iCERT System with a modern case management solution, the Foreign Labor Application Gateway (FLAG). OFLC successfully transitioned the Prevailing Wage, H-2B, H-2A, and the H-1B/H-1B/E-3 visa programs to the new FLAG system in 2019. FLAG now provides a more modern system for submitting labor certification and prevailing wage applications and communicating with OFLC throughout the application process. All decisions on those applications are issued electronically to filers and partner agencies via FLAG.

### **Wage and Hour Division (WHD)**

The Wage and Hour Division is responsible for compliance with labor standards to protect and enhance the welfare of workers in the United States. WHD is responsible for wage issues regardless of an individual's immigration status, as well as workplace conditions. It is responsible for investigating and enforcing attestations made on LCAs (Form ETA-9035), and also participates with DHS on issues related to workplace enforcement and immigration. It specifically is responsible for enforcing the Migrant and Seasonal Agricultural Worker Protection Act.

### **Board of Alien Labor Certification Appeals (BALCA)**

The Board of Alien Labor Certification Appeals accepts appeals from U.S. employers requesting review of a denial or revocation of a PERM labor certification and prevailing wage determinations.

### **Administrative Review Board (ARB)**

The Administrative Review Board was established to adjudicate appeals from decisions of DOL administrative law judges or the administrator of WHD. ARB issues final agency decisions for the secretary of labor in cases arising under a wide range of federal labor laws covering areas such as immigration, including the payment of H-1B back wages; seasonal and migrant workers; and federal construction and service contracts.

## **U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)**

The secretary of HHS promulgates regulations outlining the requirements for the medical examination of noncitizens seeking admission into the United States. The Division of Global Migration and Quarantine provides DOS and USCIS with medical screening guidelines for all examining physicians. The purpose of the medical examination is to identify applicants with inadmissible health-related conditions. HHS also administers a program whereby foreign national physicians who are subject to the home residency requirement associated with a J-1 visa may receive a waiver of that requirement by providing primary health care services in a designated Health Professional Shortage Area (HPSA). See <https://www.hhs.gov/about/agencies/oga/about-oga/what-we-do/exchange-visitor-program/index.html>.

### **Office of Refugee Resettlement (ORR)**

The Office of Refugee Resettlement, an office of the Administration for Children and Families of HHS, provides refugees with critical resources to assist them in becoming integrated members of American society. It provides services for several groups of individuals without immigration status in the United States, including unaccompanied minor children and victims of torture. ORR is composed of the following five divisions: Refugee Assistance; Refugee Health; Refugee Services; Children’s Services, which includes the Unaccompanied Refugee Minors program; and Office of the Director.

## **U.S. SOCIAL SECURITY ADMINISTRATION (SSA)**

The SSA administers Social Security, a social insurance program for retirement, disability, and survivors’ benefits. To qualify for these benefits, workers pay Social Security taxes on their earnings. The SSA is not in the enforcement business; it is in the insurance business. However, on account of its massive database, it has been pulled into enforcement by DHS, particularly in the establishment of E-Verify. In addition, it has specific and direct concerns with identity theft and wrongful use of Social Security numbers (SSNs). In 2007, DHS issued a final rule stating that it would utilize an SSA finding of no-match between a name and a Social Security number for enforcement purposes. After numerous legal challenges, DHS rescinded the rule in 2009.

Generally, noncitizens authorized to work in the United States by DHS can obtain a SSN, which is used to report a person’s wages to the government and to determine a person’s eligibility for Social Security benefits. Some USCIS petitions, as well as immigrant petitions abroad, allow an individual to apply for a Social Security number along with their immigrant benefit.

## **INTERNAL REVENUE SERVICE (IRS)**

The IRS is a bureau of the U.S. Department of the Treasury and, like SSA, is not charged with immigration enforcement. Indeed, the IRS can have a conflict of interest with the enforcement policies of DHS, as its mission is to ensure that all persons with U.S. earnings are able to declare income and pay taxes—even unauthorized workers. To this end, it has created an individual tax identification number (ITIN) for persons unable to declare and pay taxes using a valid Social Security number. However, in 2015, Congress enacted laws requiring applicants to provide original or certified documents establishing identity when applying for the ITIN. Certain individuals may be required to renew their ITIN under these changes as well. For more information regarding these changes, see <https://www.irs.gov/individuals/individual-taxpayer-identification-number-itin>.

## **U.S. DEPARTMENT OF DEFENSE (DOD)**

The DOD is the executive agency charged with coordinating and supervising all functions of the government concerned with the United States Armed Forces. USCIS, in conjunction with the DOD, permits certain immigration benefits to noncitizen members of the U.S. military and to noncitizen military family members, including expedited naturalization, naturalization through the Military Access Vital to the National Interest (MAVNI) pilot program, Military Parole in Place, and others. See <https://www.uscis.gov/military>.

**U.S. DEPARTMENT OF VETERANS AFFAIRS (VA)**

Similar to the J-1 visa waiver program offered by HHS, the VA through the Veterans Health Administration administers a program whereby foreign national physicians who are subject to the home residence requirement associated with a J-1 visa may receive a waiver of that requirement by providing health care services at designated facilities. See [https://www.va.gov/vhapublications/ViewPublication.asp?pub\\_ID=10033](https://www.va.gov/vhapublications/ViewPublication.asp?pub_ID=10033).