

Agencies That Affect Immigration Law

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INTRODUCTION

This article provides an overview of the various government agencies that play a role in the 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), Justice (DOJ), State (DOS), and 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 2002.¹ 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. John F. Kelly is the current head of DHS and was sworn in on January 20, 2017, as the fifth secretary of homeland security.

The creation of DHS constituted a massive government reorganization involving the merger of 22 government 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 U.S. Department of Justice (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 is responsible for “providing accurate and useful information to [its] customers, granting immigration and citizenship benefits, promoting an awareness and understanding of citizenship, and ensuring the integrity of our immigration system.” 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.

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

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.

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, 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 responsible for ensuring homeland security and public safety through the criminal and civil enforcement of federal laws governing border control, customs, trade, and immigration. It 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, criminal immigrants, etc. ICE agents conduct investigations aimed at protecting critical infrastructure industries vulnerable to sabotage and 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 division of ICE that is responsible for detaining and removing certain aliens from the United States. According to the ICE website, ERO’s mission is “to identify, arrest, and remove aliens who present a danger to national security or are a risk to public safety, as well as those who enter the United States illegally or otherwise undermine the integrity of our immigration laws and our border control efforts.”

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 and manages SEVP-certified schools and nonimmigrant students in F and M status and their dependents, using the Internet-based Student and Exchange Visitor Information System (SEVIS). The information in SEVIS is accessible to other interested federal agencies, such as CBP and USCIS. DOS also manages J-1 nonimmigrants in SEVIS.

U.S. DEPARTMENT OF JUSTICE (DOJ)

Under the leadership of the attorney general, the 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 most 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 DOJ, with the DOJ now focused 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, the 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 asylum or other relief from 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 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).² 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.

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.

² 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. In 2016 U.S. consular officers issued over 10 million nonimmigrant visas to persons who wished to visit, work, or study in the United States and over 600,000 immigrant visas in 2016 to people coming to the United States permanently. Most decisions by consular officers regarding visas are not reviewable by U.S. courts.

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. Most recently the NVC began handling all domestic inquiries from the public regarding nonimmigrant and immigrant visa cases on January 12, 2015.

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, available at <http://bit.ly/VisaBull>.

Kentucky Consular Center (KCC)

The Diversity Visa 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 50,000 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 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 petitions for permanent residence. In addition, DOL works with DHS on workplace enforcement and immigration issues.

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 and Chicago. 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 PERM (Program Electronic Review Management). 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 the DOL's prevailing wage, and that hiring a foreign worker will not adversely affect the working conditions of workers similarly employed.

Wage and Hour Division (WHD)

The Wage and Hour Division is responsible for compliance with labor standards to protect and enhance the welfare of worker's 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 labor condition applications (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.

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; Resettlement 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. 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.

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>.