

# BNA DAILY LABOR REPORT

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## MAYORKAS OUTLINES 2011 GOALS FOR USCIS, INCLUDING FOCUS ON PROMOTING CONSISTENCY

The Department of Homeland Security's U.S. Citizenship and Immigration Services plans to focus on improving several key areas in 2011, including "promoting quality and consistency" in the adjudication of immigration benefit applications, such as petitions for employment visas, USCIS Director Alejandro Mayorkas told reporters Feb. 17.

"There are areas where USCIS policies aren't consistent or consistently applied," Mayorkas said. Ultimately, "we are one agency," so it is "critical to be consistent," he said.

To promote consistency the agency has been engaged in a policy review of all adjudication and customer service policies, Mayorkas said. The review, announced in April 2010, began with a poll of stakeholders and USCIS employees to determine what issues to examine first.

In July 2010 USCIS announced the first 10 issues to be addressed, including several employment-related topics such as: H-1B visas; employment-based adjustment of status; employment-based immigrants preference categories 1, 2 and 3 for priority workers, professionals with advanced degrees, and skilled workers; and employment authorizations and travel documents ( 143 DLR A-5, 7/27/10).

The policy review is "under way," Mayorkas said, and may lead to updating a variety of agency policies.

### **Additional AAO Precedential Decisions Expected.**

According to Mayorkas, another way the agency can provide clarity and consistency is through the issuance of more precedential Administrative Appeals Office decisions.

In Oct. 2010, USCIS issued two precedential AAO decisions, both related to employment-based immigration benefits, the first binding decisions issued in 12 years ( 203 DLR A-12, 10/21/10). Both cases were originally decided several years ago and have been used as guidance by USCIS adjudicators, but they were not binding until they were issued as precedential decisions.

An AAO precedential decision is an immigration appeals case that DHS, with the attorney general's concurrence, designates as establishing a rule for deciding future cases.

While Mayorkas declined to specify why the agency went so many years without issuing binding AAO decisions, he said precedential decisions are important because they provide "helpful guidance" for both adjudicators and stakeholders.

Issuing additional binding AAO decisions this year is a priority "because there is a need for guideposts and predictability when coming before the agency," he added.

According to Mayorkas, the "output [of binding AAO decisions] will be more frequent," in part because of a streamlined interagency review process. However, he did not indicate when the next binding decision is expected to be released.

### **Transformation Initiative on Track.**

Mayorkas also discussed the upcoming release of the first phase of a transformation initiative designed to transition the agency from paper to electronic case management.

The first phase, which will impact nonimmigrant related petitions including petitions for temporary worker visas, is expected to be rolled out sometime during the fourth quarter of fiscal year 2011. At that time USCIS customers in the nonimmigrant categories will be able to create individual electronic accounts that can be managed online and will be able to file petitions and applications online.

Mayorkas said the transformation project has been delayed but is not over budget. "One reason the project has taken longer than expected was the resequencing of the transformation project," he said.

"We are progressing," and "I still have complete faith" in the transformation initiative, he added.

### **Measures to Combat Fraud.**

Mayorkas said the agency will continue combatting various forms of immigration benefit fraud in 2011.

He added that he hopes to persuade prosecutors across the nation to view immigration fraud cases not through the lens of whether or not the cases meet certain dollar amounts to achieve prosecutorial thresholds. Instead, he said prosecutors need to be educated about the "significant deterrent value" in pursuing immigration fraud cases.

In addition, a key initiative in 2011 will address the problems related to the unauthorized practice of immigration law, Mayorkas said. The unauthorized practice of law occurs when those who are not attorneys provide legal assistance to applicants or petitioners in immigration matters, charge more than a nominal fee, and hold themselves out to be qualified in legal matters, USCIS said.

The unauthorized practice of immigration law (UPIL) initiative has begun as a seven-city pilot program, Mayorkas said. The initiative--in New York, Baltimore, Atlanta, Detroit, San Antonio, Sacramento, and Los Angeles--seeks to promote public understanding of the best ways to find bona fide legal advice and avoid scams, build capacity for legitimate legal assistance, and support enforcement actions against those who engage in the unauthorized practice of law, he said.

"Our goal is to protect those who are victimized by individuals who purport to be immigration lawyers," Mayorkas said. The unauthorized practice of law has been a "consistent problem" and we "want to develop institutional and sustained responses to the problem," he added.

In addition, Mayorkas said he hopes that "education and outreach will help potential victims identify resources available to them so that they are not driven to fraudsters."

### **USCIS Continues to Promote E-Verify.**

Mayorkas said the agency will also continue to promote E-Verify, the federal government's electronic employment verification program.

"We strongly believe in the value of E-Verify," and will continue efforts to encourage broader use of the program,

he said.

Currently USCIS is adding about 1,300 new employers to the E-Verify program each week, and "further expansion will be assisted by greater outreach to businesses," Mayorkas said.

While Mayorkas said it would be best if Congress only mandated E-Verify as part of a broader overhaul of the nation's immigration laws, he also said the E-Verify system can handle increased volume if a mandate is passed.

"The impact of an E-Verify mandate depends largely on the language of the legislation and the time frame given to implement a mandate," Mayorkas said. An "instantaneous" mandate would be difficult, with personnel and capacity issues, but a "scaling process" is a different issue that could be handled by the agency, he added.

## **2010 Accomplishments.**

In addition to plans for 2011, Mayorkas highlighted major USCIS accomplishments achieved last year, including:

- issuing Temporary Protected Status for Haitians following the earthquake in that country ( 10 DLR A-13, 1/19/10);
- issuing a new, more secure green card and naturalization certificate ( 90 DLR A-10, 5/12/10);
- adding passport photos to the E-Verify program as a step to deter identity theft ( 217 DLR A-2, 11/10/10);
- issuing all 10,000 U visas available to victims of crime including forced laborers and other trafficking victims ( 135 DLR A-8, 7/15/10);
- issuing two Administrative Appeals Office precedential decisions related to employment issues ( 203 DLR A-12, 10/21/10);
- creating the first ever fee waiver form ( 224 DLR A-11, 11/22/10); and
- posting policy guidance and memoranda for public comment for the first time.

USCIS "accomplished a great deal" last year, and the agency hopes to continue to improve this year, Mayorkas said.