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Via E-Mail: prakash.khatri@dhs.gov

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Ombudsman
Office of Citizenship & Immigration Services
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Mr. Khatri:

I am writing to you as USCIS Ombudsman to begin the first of a number of open letters on how the administration of our immigration laws can be improved. I greatly enjoyed meeting and discussing this subject with you at the mid-year conference of the American Immigration Lawyers Association earlier this month. As you noted in our discussion, your mandate as the nation's first USCIS Ombudsman presents a truly unparalleled opportunity for positive change. You have the legal authority and the "in-the-trenches" prior expertise to transform the government's delivery of immigration services to the public.

To begin this dialogue with you, I am offering a bit of immigration institutional history. I enclose a copy of an April 21, 1980 memorandum issued by then Southern Regional Commissioner, Durward E. Powell, Jr., and send it in the hope that it may serve as an antidote to the current "culture of no" that prevails within much of DHS's immigration bureaus, and to counteract the lingering effects of the former Commissioner Ziglar's now-revoked "zero tolerance policy". (By the way, I note my indebtedness to my colleagues in AILA's Texas Chapter, and particularly to Eugene Flynn, for having brought this memorandum to recent public attention.)

The memorandum makes certain points that today seem forgotten or never fully learned by many among the current cadre of both veteran and newly-minted adjudicators:

1. Most petitioners, applicants and beneficiaries who seek legal benefits under the immigration laws are "honest, hard-working people, not interested in fraud or obtaining any benefit for which they cannot qualify";
2. "[O]bjectivity and professionalism on the job" are essential requirements for immigration adjudicators;
3. "The [government] decision maker in adjudicating applications and petitions should not attitudinally approach the process, either consciously or unconsciously, in an adversary process or looking for a reason to deny"; and
4. "[Adjudicators] with [their] broad knowledge of law and policy, [should all] approach [applications and petitions] attitudinally, in a friendly professional manner, looking for a way to approve them."



Sadly, these four precepts are only occasionally observed in the USCIS of today. Instead, practitioners hear reports that USCIS is taking steps to develop and implement its own fraud-investigation capabilities, notwithstanding that Congress, in enacting the Homeland Security Act, put investigative and enforcement powers in other units within DHS. In my view, a focus on the ferreting out of suspected fraud will only distract from the USCIS's overriding mission, the provision of immigration benefits, and add to the growing backlogs of undecided cases.

This is not to suggest, however, that fraud should go unpunished. Rather, I believe that petitions and applications should be promptly decided on the basis of the evidence in the record, and that suspected fraud should be promptly reported to immigration enforcement agencies for investigation, trial on the merits, and punishment in deserving cases.

USCIS adjudicators should therefore focus on embodying the four precepts of former Regional Commissioner Powell as the best means of tackling the enormous backlogs in petitions and applications. They should not unilaterally anoint themselves as immigration G-men and G-women and thereby defy the Congressional will.

Thus, I write to ask that you confer with appropriate national officers within USCIS so that USCIS and your office may formally reaffirm, in a new jointly-issued national policy memorandum, the principles espoused by Regional Commissioner Powell. Thank you for taking the time to consider my suggestion. I welcome your views.

Regards,

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