

US CITIZENSHIP AND IMMIGRATION SERVICES E-FILING INITIATIVE

Position Paper

July 14, 2004

ABSTRACT

The purpose of this paper is to promote expansion of the relationship between the US Citizenship and Immigration Services (USCIS) and the E-Filing Standards for Immigration Group (ESIG) to facilitate the widespread adoption by immigration applicants and their petitioners of the most streamlined, transparent and user-friendly e-filing resources available.

INTRODUCTION

The **US Citizenship and Immigration Services E-Filing Initiative (CISEFI)** is part of the ongoing effort to provide simpler, more convenient ways for USCIS applicants and petitioners (“customers”) to apply for immigration benefits while meeting national security objectives.

CISEFI currently offers customers the following resources online:

- Monitor case status
- Download and print approximately 40 forms
- Schedule a date and time to meet with an Immigration Officer
- E-File the following forms and petitions:
 - Replacement of Permanent Resident Card (Form I-90)
 - Employment Authorization Documents (Form I-765)
 - Employment-based Petition for Non-immigrant Worker (Form I-129)
 - Nonimmigrant Petition Based on Blanket L Petition (Form I-129S)
 - Travel documents (Form I-131)
 - Employment-based Petition for Immigrant Worker (Form I-140)
 - Changing or extending non-immigrant status (Form I-539)
 - Temporary Protected Status (Form I-821)
 - Premium Processing (Form I-907)
- Electronic Payment for E-Filing (Credit Cards, Debit Cards, Electronic Funds Transfer)

ESIG is a voluntary consortium of established US immigration law firms and electronic immigration software and online applications service providers¹. ESIG was established for the purpose of sharing knowledge and providing a consensus position on USCIS, Department of Labor (DOL) and Department of State (DOS) e-filing initiatives. ESIG intends to provide useful stakeholder input into e-filing decision-making and to promote technology growth within the USCIS and DOL as a means of better serving petitioners and applicants for immigration benefits.

ISSUES

The IRS encountered a variety of challenges during the development of its e-filing process (security, large-volume business processing issues, ability to accept XML forms, etc.) and it can only benefit CISEFI to apply this knowledge to improve the delivery of immigration and citizenship services.

1. **Security** – Due to insufficient system security, the confidentiality of private data can be jeopardized and information may be misused.
2. **Consistent End-user Experience** – By focusing on the user experience, USCIS can move to a more “customer focused” orientation.
3. **Document Review** – Necessary for applicants and their petitioners prior to submitting applications.

¹ See attached member list.

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4. **Large-Volume Businesses** – Businesses face a wide variety of processing issues.
5. **Duplication of Effort** – Attempts to build a system from scratch attempt to duplicate current systems already in place.
6. **Compatibility** – Relying on private industry to develop e-filing modules that law firms, businesses and public will actually use will lead to widespread adoption of the e-filing process.
7. **Compliance** – The government should not incur paper moving and storage expenses as directed by the Unfunded Mandate Reform Act, the Paperwork Reduction Act and the Small Business Paperwork Relief Act.
8. **Data Transfer/Storage** – Resources should not be allocated to data entry and scanning when information can be captured and transferred directly into the system.
9. **Legal Concerns** – Any comprehensive e-filing system developed will require the interpretation of laws and regulations, placing additional strain on the USCIS.

Position

Through its collaborative work and member expertise, ESIG proposes the following cooperative goals and working relationships with CISEFI:

1. **ESIG and CISEFI should establish and develop an ongoing relationship.**
CISEFI should include ESIG in the continuing development and planning of its e-filing system, including the establishment of e-filing standards, and the high-level dissemination of information regarding the system.
2. **ESIG should be considered for and included in a standards board established by CISEFI.**
As the views of ESIG constituents (users, their legal representatives and their technology vendors) should be recognized as valued and meaningful contributions to the e-filing development process, ESIG should be included as a member on the standards board, which will serve as the vehicle for a real working relationship between CISEFI and ESIG.
3. **ESIG should collaborate with CISEFI on the development of the e-filing system.**
ESIG and CISEFI should establish a state-of-the-art electronic e-filing system that will ensure the secure, simple transfer of data to the USCIS system.
4. **ESIG and CISEFI should create an initial standard based on extensible markup language (XML).**
Generally considered the most flexible and efficient method for interoperation between systems, an XML standard would allow the variety of current vendor systems to easily integrate with the USCIS e-filing system.

JUSTIFICATION

Issue 1 – Security

Security of personal and financial information may be the number one barrier people have to preparing their visa applications via the Internet. Currently, the USCIS' interim final rule and prefatory comment do not outline the steps the agency will use to assure e-filers that digitally provided data will be used only for lawful purposes and be accessible only to government officials on a need-to-know basis within the strict limits of constitutional and statutory protections of individual and organizational privacy. Moreover, the interim final rule does not provide a basis for a submitter of information to request pre-disclosure notification pursuant to 5 U.S.C. § 552 (b)(4) and Executive Order no. 12,600, 52 Fed. Reg. 23781 (June 23, 1987).

Worries over fraud and security breaches have kept individuals and accountants from fully adopting e-filing with the IRS, *the USCIS e-filing system should expressly address legitimate data privacy and security concerns.* Increasingly, nations and states (the European Union and the State of California, among others) are adopting strict standards for protection from unauthorized use or disclosure of sensitive personal and financial information. There

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is always going to be some element of risk just because of the dynamic environment, but CISEFI must be proactive in dealing with potential security threats.

- Develop intrusion detection systems – USCIS must be able to detect whether attempts are being made to breach their systems.
- Establish a computer incident response team to constantly monitor USCIS networks.
- Focus on potential operating system/browser configuration problems – With hackers focusing on security flaws in Microsoft’s Internet Explorer, customers will increasingly be using other operating systems and browsers to access their e-filing application.
- Establish a strict password management policy – When reviewing the IRS e-filing process in 2001, GAO auditors guessed many passwords and found others written down and posted in clear view at one IRS data processing facility.
- Create a security certification program for new initiatives.
- Protect from identity theft by establishing a clear privacy policy – The IRS elevated the importance of confidentiality by moving responsibility for its privacy policy from information systems to the communications and public relations staff.
- Offer the ability to create various levels of security access within an account to protect individual and company information

If USCIS truly desires widespread adoption of e-filing, it must expressly address and assuage the public and stakeholders’ tangible concerns regarding the e-filing submission of sensitive data. ESIG members, experienced with encryption and other security methods, will be helpful in assisting CISEFI to navigate an environment filled with potential security threats.

Issue 2 – Consistent End-user Experience

The current e-filing system accomplishes little in the way of convenience for the applicant. Although e-filing offers the ability to submit your application anywhere, anytime, and eliminates the need to stand in line, it does not shorten the processing time for applications and applicants who e-file must still submit paper documentation in support of their application. A user-friendly system that allows the applicant to access and edit information will reduce the resources dedicated to customer support and is more likely to draw widespread adoption.

Issue 3 – Document Review

CISEFI needs to consider the modern attorney/client relationship during development of its e-filing system. Currently the petitioner and applicant must be in the same room at the same time to review forms – an inconvenience for both parties. Forms should be available for review and approval by any interested party accessible via a password-protected section of the e-filing website.

Issue 4 – Large-Volume Businesses

Due to costs, large-volume users are unlikely to move to the current USCIS e-filing system. Given the option of paying employees to re-type information into the USCIS system or continuing to ship the forms – as most firms do – firms will opt to continue with the current process rather than paying the extra money for data entry. Additionally, large firms require the ability to process large numbers of applications at once. By focusing on the needs of individuals without consideration for larger business entities or individuals assisted by legal representatives already using software and online processing applications, USCIS will be creating a major barrier to the widespread adoption of its e-filing system.

Issue 5 – Duplication of Effort

Current CISEFI development efforts are not only duplicating systems already in place, but they have considerable ground to cover to approach the capability of existing systems. All of the forms and features currently offered

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online by USCIS have been available through ESIG vendors for years. By using proven systems, USCIS greatly reduces the opportunities for bugs (already USCIS has experienced problems with false approval notices sent out for e-filed premium processing I-129s). Instead of spending time replicating existing programs, USCIS should be focusing on other crucial areas of operation.

Issue 6 – Compatibility

ESIG proposes that CISEFI focus on efficient linking of mature electronic vendor systems to USCIS rather than the development of systems already available. The amount of time, funding and personnel required to link USCIS with vendor systems would be drastically lower than building a system from the ground up and it would avoid placing limitations on applicants and their legal representatives during the processing of applications. By embracing ESIG and including it in the planning and development of the e-filing system, widespread adoption of the system is far more likely.

Issue 7 - Compliancy

The current system provides an insignificant reduction of paperwork burden for applicants and petitioners of immigration benefits as mandated by the Paperwork Reduction and the Small Business Paperwork Reduction Acts and does not maximize the capacity for electronic storage and portability of information. Users of the e-filing system may complete a few forms online, however nearly 50 percent of the total volume of benefits applications submitted annually must be downloaded, manually completed and mailed to USCIS. If an applicant chooses to use a current vendor system, forms must be printed out and sent to USCIS. The ability to concurrently file paper-based applications and e-filing applications does not exist. With so many forms still being received in paper form via the postal system, the immigration benefits application process currently requires truckloads of documents to be transported and stored on a weekly basis and USCIS may have problems acting in compliance with its own backlog elimination strategy, which aims to eliminate the backlog and ensure a six-month or less processing time by the end of 2006. The available online forms provide relatively insignificant cost reduction when compared with the potential savings that would result from the use of the more comprehensive systems currently provided by online immigration application vendors (“vendors”).

ESIG and CISEFI should work together to develop a system that will significantly reduce the amount of paper required in the immigration benefits application process. To honor the Paperwork Reduction Act, the e-filing system should not only store electronic data but should also accept incoming vendor data to significantly reduce the costs of transportation and the time spent moving documents for processing.

Issue 8 - Data Transfer/Storage

Current USCIS online forms are specifically designed to facilitate data entry consistent with scanning and data storage software. While scanning can be quicker and more accurate than manual data entry, it is not as fast or efficient as direct data transfer. By taking advantage of the data already available in electronic format, ESIG and CISEFI can relieve the paperwork burden for USCIS, applicants and petitioners while reducing the cost of storage and delivery of information. Additionally, batch transfer of electronic data from existing systems drastically reduces workload and the time it takes to process applications by eliminating steps in the current process (i.e. printing, shipping, retyping, moving and storage) while decreasing the chance for human error. In order to make the system useful to large-volume users with internal case management systems, the USCIS should publish and support specifications that allow the vendors’ electronic systems to submit data directly to the USCIS system without the need for human retyping of information.

In addition to receiving electronic information directly, the USCIS system needs to be able to verify successful submittal of the data. This capability opens the door to large firms integrating their case management systems with the USCIS system, providing great benefits for both sides. The USCIS should, therefore, publish in the Federal Register a notice of “negotiated rulemaking” thereby allowing interested parties to participate in the development of acceptable standards. There are a number of mechanisms that could allow for a standard interface between the USCIS e-filing system and case management software used by large-volume users. One common approach would be to define an XML schema and software to “write” to the schema. The relatively small investment needed to

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modify the e-filing system to allow filing through a case management system is well worth the enormous savings resulting from widespread adoption.

There is no way users may retrieve, edit, or save data once it is entered into the USCIS e-filing system. It is likely that applicants will make errors on their submissions, considering their first language may not be English, and some applicants may not be particularly adept at online form completion. Applicants and petitioners should be permitted to review, edit, and save their application information via the USCIS e-filing site. Re-using existing data in the system would be especially helpful when applicants are filing renewals and when corporate petitioners submit essentially the same business data in numerous petitions. Additionally, the ability to save and retrieve information at a later date can help to mitigate problems raised by the current USCIS program feature which causes users' online sessions to "time out" after 20 minutes of inactivity. If applicants require more time to collect data, they could simply save the incomplete form and return later when the individual or company had the needed information.

The USCIS system does not allow applicants to electronically submit attachments. In order to provide a simple, efficient system, the CISEFI e-filing system must accommodate electronic submission of attachments. Without electronic submission, applicants and petitioners must mail in the required supporting documentation, and according to USCIS, adjudication of an application will not take place until this documentation is received. Therefore, filing forms online will do little to reduce processing times, workload, and paper expenses. The American Immigration Lawyers Association (AILA) has taken the position that if supporting documentation is made electronically available to adjudicators, the process of adjudication will become more efficient and the backlog issue will be positively affected.

ESIG believes that CISEFI should develop a system capable of accepting data already captured electronically from vendor firms. A system with this capability would also follow the strategy put forth in the Office of Management and Budget's E-Government Strategy, which calls for the reduction of the government's burden on businesses by eliminating redundant collection of data and better leveraging e-business technologies for communication.

Issue 9 – Legal Concerns

As the USCIS e-filing system evolves, it runs the danger of creeping into areas in the process that may require legal interpretation. For example, using built-in logic the system may lead an applicant on a track not in the applicant's best interest or require the system to perform a legal judgment. CISEFI must be careful not to impinge upon an area integral to a fair and transparent immigration benefits application process. Careful planning must be made by both the users and USCIS to determine where the USCIS system will begin and the users' input will end.

Another hindrance to adoption is a perception of increased risk of malpractice on the part of legal representatives. A CISEFI system that duplicates systems already developed and in use by vendors will increase the chance for errors in the application process. Given the choice between printing out cases from their current systems and paying personnel to retype information into a new CISEFI system, petitioners will likely choose the cheaper alternative, which will also provide a lesser chance of malpractice.

ESIG attorney members have considerable real-world experience in substantive and procedural aspects of immigration law from the perspective of the attorney and client communities. ESIG vendor members have already navigated the landscape of technology and law in the area of immigration and government agencies. With members familiar with the application of technology to the filing process and the dangers associated with it, ESIG is well positioned to be the guardian of fairness in the immigration e-filing process. In order to maintain the integrity of the immigration benefits application process, CISEFI would benefit from including ESIG in the e-filing planning process.

CONCLUSION

CISEFI and ESIG share a common goal – to provide a simple, convenient way for individuals to apply for immigration benefits. Both groups were created to promote technology growth within the USCIS, DOL and DOS as a means of better serving petitioners and applicants for immigration benefits. Two organizations representing

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different perspectives of the same system with the same goals are a natural fit to work together on the e-filing system. A cooperative working relationship between CISEFI and ESIG in the planning and development phases of the e-filing system is the best way to anticipate community needs, benefit all citizen-centered groups and ensure a smooth, secure transition to a truly beneficial service. ESIG believes its members' experience with case management, forms programs, data security and immigration law will be a valuable resource for the USCIS E-Filing Initiative. A cooperative effort, including the formation of a standards board, will ensure the development of a secure, flexible XML-based system that will benefit USCIS, applicants and petitioners while saving time and money for all involved parties. In addition, the cooperative relationship will facilitate the adherence to new legislation regarding government waste and the reduction of burden to small business and government agencies. By virtue of the relationship itself, ESIG will assist CISEFI in attaining widespread adoption of its system.

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