

# **ESIG E-filing Standards for Immigration Group**

350 N. LaSalle St. #1400, Chicago, IL 60610

e-filing@visaprep.com

June 30, 2003

**By electronic transmission to**  
[insregs@usdoj.gov](mailto:insregs@usdoj.gov)

Director, Regulations and Forms Services Division  
Bureau of Citizenship and Immigration Services  
Department of Homeland Security  
425 I Street NW  
Room 4034  
Washington, DC 20536



Re: CIS No. 2224-02  
*Electronic Signature on Applications and Petitions for Immigration and  
Naturalization Benefits; Interim Final Rule,  
68 Federal Register No. 82, p. 23010 et seq. (April 29, 2003)*

Dear Director:

The E-Filing Standards for Immigration Group (ESIG), a voluntary consortium of established U.S. immigration law firms and their electronic immigration software and online applications solution-providers<sup>1</sup>, is pleased to submit comments to the Bureau of

---

<sup>1</sup> ESIG membership includes: A. Stevenson Bogue, McGrath, North, Mullin; Al Limaye, Logistic Solutions; Ali M. Smali; America Alas, Center for Immigration & Advocacy Services; Andrea Ray, Immigrant Software Corp.; Angelo Paparelli, Paparelli & Partners, LLP; Ann Pinchak, Pinchak & Associates; Aron Finkelstein, Sheela Murthy; Barbara Johnson, Barbara J. Johnson & Assoc; Behdad Payami, Cerenade; Brian Taylor, LawLogix; Christina Kleiser, Community Refugee & Immigration Svcs; Dan Siciliano, Stanford Law School; Daniel Horne, Walther Solutions; David Nachman, Grotta Glassman; Ellen M. Flynn, LexisNexis; Emilia Banuelos, Emilia Banuelos, Attorney at Law; Eric K. Copland, Copland & Brenner; Fred Colman, Immigration Tracker; Fred Ford, Fred Ford & Associates; Gabriel Mnayarji; George Bruno, Law Offices of George Bruno; George Carenbauer, Steptoe & Johnson; Greg Siskind, Siskind, Susser, et. Al.; Greg Walther, Walther Solutions; Gregory Walther, ARIA; Gus Shihab, Shihab & Associates; James Judkins, Circus Chimera; Jesse Moorman, Human Rights Project; John Fay, Ronald W. Freeman, PC; Kathleen Hutchins, Kreis Enderle Callandar & Hutchins; Kathy Robbins, McGrath, North, Libby Whitley, Mid Atlantic Resources Assoc; Marc Topoleski, Ellis Porter; Mary Carmen Madrid-Crost, Law Ofc. Of Mary C.R. Madrid-Crost; Melissa Lisbon, Fragomen; Moujan Nosrat; Orlando Gamarra, Law Office of Orlando Gamarra; Patricia Ghanam, ASQ Standards Development; Patricia Kerns, Law Office of Patricia Kerns; Patrick Page, Patrick Page, Atty at Law; Paul Good, Paul Good & Associates; Peggy McCormick, Minsky McCormick; Phil Alterman, Carter & Alterman; Rakesh Mehotra, Law Offices of Rakesh Mehotra; Raul Garcia, Cristo Vive Christian Social Svcs; Robert Gard, Azulay, Horn & Khalaf; Robert Meltzer, VisaPrep.com; Rose Aneke-Clark; Sam Abujawdeh, Logistic Solutions; Sam Udani, ILW; Sanjay Kulkarni, Emaximm; Sanjo Omoniyi, Law Office of Olusanjo Omoniyi; Sarah Tobocman, Gunster Yoakley and Stewart; Steve Navarre, Minsky

Citizenship and Immigration Services, in response to the BCIS' invitation for comments captioned above. ESIG was established for the purpose of sharing knowledge and providing a consensus position on BCIS and DOL e-filing initiatives. ESIG intends by this submission of comments to provide useful stakeholder input into e-filing decision-making and to promote technology growth within the BCIS and DOL as a means of better serving petitioners and applicants for immigration benefits. ESIG members also believe that our comments and suggestions, if implemented, will promote the goals of government efficiency, process integrity and speed, national security, cost savings and reduction of burdens on the public.

ESIG members applaud BCIS in moving forward with this initiative as a useful, if modest and incomplete, first step in the ultimate transition to full digital submission of petitions and applications for benefits. We recognize the maxim that perfection is the enemy of the good, and thus offer our recommendations in the hope that BCIS will use its appropriated resources, including the significant sums now paid in user fees, to rapidly implement the suggested solutions so that the dream of full digital submission can be realized promptly.

ESIG members thus submit the following comments on the BCIS interim final rule allowing electronic filing of applications for benefits.

- 1. On-Line Payment by Credit or Debit Card Must be Permitted.** The process for payment of government fees – deducting money electronically from a checking or savings account – does not allow for acceptable monitoring of payments or adequate accounting control. Providing a bank account number to anyone, and especially over the Internet, may well allow virtually unlimited access to funds in the account. For law firms, this allows only two payment options: Either 1) the firm member who is trusted with the practice's banking information must be present for all e-filings, or 2) paralegals or clerks, often entry-level or temporary employees, must be entrusted with sensitive and potentially financially damaging firm information. Neither option is one that most firms can prudently adopt. Additionally, deductions from bank accounts are detailed in monthly statements, creating lag times of up to four weeks between a deduction by the BCIS and the account holder receiving tangible confirmation of the deduction. This is especially problematic for corporate petitioners, individuals or attorneys filing multiple applications during a month. Moreover, digital payment by checking or savings account may not provide sufficiently detailed information to confirm the names of petitioner and beneficiaries, and the particular form number or registration number (CLAIMS filing number or "A" number). The e-filing system should provide for payment via credit or debit card,

which have clearly defined spending and usage limits, which can often be set to meet the needs of the cardholder.

- 2. E-Filing Must Permit Data Access, Retention and Re-Use.** The e-filing system does not allow users to access data that they have submitted. There is no way users may retrieve, edit, or save data once it is entered into the BCIS e-filing system. This flaw rests on the dubious assumption that applicant will not make errors on their submissions, an unlikely scenario given that many applicants' first language may not be English, and other applicants may not be particularly adept at on-line form filling. Applicants and petitioners should be permitted to review, edit, and save their application information via the BCIS 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, thereby providing a more convenient and customer-friendly alternative to starting from scratch. Additionally, being able to save information and retrieve it later would help to mitigate the problems raised by the current BCIS program feature that causes a user's on-line session to "time out" after 20 minutes of inactivity. If the applicant required more time to collect data, he/she could simply save the incomplete form and return later when the individual or company had the information they needed.
- 3. E-Filing Must Accommodate Electronic Submission of Attachments.** Applicants and petitioners must mail in the required supporting documentation, and according to BCIS, adjudication of an application will not take place until this documentation is received. Therefore, the half-way step of filing the forms portion of an application electronically will not reduce BCIS processing times or workload, and will result in little if any net improvement on the time it takes for applicants to receive decisions. Unless supporting documentation is accepted electronically, the electronically submitted forms portion of the application must wait for the other part of the application to be received before it is reviewed, thereby negating any increased speed of filing gained by submitting forms electronically.
- 4. The E-filing Provision for Biometric Intake Should Be Eliminated and Should Instead Be the Subject of a Separate Rulemaking.** The need for the applicant to schedule an appointment for biometric intake slows down the filing process compared to traditional filing. In essence, it adds an additional step to the I-765 process, where normally applicants can have their photo taken themselves and mail it to the BCIS. E-filing should allow for applicants to follow a process similar to the current I-765 photo instructions, with the additional convenience of sending the photos, pursuant to specifications, electronically. If BCIS biometric intake is considered necessary, the public should be given a full opportunity to comment on that specific topic in a separate publication of a proposal in the Federal Register.

**5. E-Filing Must be Integrated with Forms-Preparation and Case-Management Features Based on Agreed Technical Standards (Preferably through “Negotiated Rulemaking”).** The BCIS e-filing system does not allow

corporations, voluntary agencies and law firms to file applications and petitions using existing forms-preparation and case-management software and systems. Given that most of these large-volume users now employ automated preparation and case-management systems, these features need to be added to the BCIS e-filing site. For purposes of efficiency and quality assurance, such large-volume users typically have systems in place where information concerning immigration matters is entered into a database in a controlled manner. At the appropriate time, forms are then generated from the information in the database. In this manner, multiple forms may be generated using a common base of information. The BCIS electronic filing system requires hand-typing information into online forms one by one. For this reason, it is not helpful and is indeed quite burdensome and time-consuming to large-volume users who currently use immigration case management systems, and it increases costs that are borne by beneficiaries of applications and petitions.

If the firms using case management systems were to attempt to use the online filing system in its current form, they would need to retype the information for each form into the BCIS online intake screens. This approach would dramatically slow down the filing process and also increase the likelihood of mistakes in the form of typographical errors. The cost to these firms of using the electronic filing system in its current form would be at least in the tens of thousands of dollars per year and result in a significant overall cost to business in the tens of millions of dollars, as noted in the rule, and would be inconsistent with the Unfunded Mandate Reform Act, the Paperwork Reduction Act and the Small Business Paperwork Relief Act.

As the E-Government strategy memorandum prepared by the Office of Management and Budget articulates, e-filing initiatives must address the delivery of e-services to four citizen-centered groups, including businesses. In that regard the Government's stated goal was to "reduce government's burden on businesses by eliminating redundant collection of data and better leveraging E-business technologies for communication." Again, the current BCIS e-filing system does not achieve this goal but results in the opposite for businesses and law firms in particular, because it forces them to re-enter or type information which could instead be quickly and easily transmitted by already established electronic means. Lastly, due to the costs, large-volume users are unlikely to move to the current electronic filing system, which will thus create a major barrier to the widespread adoption of the BCIS e-filing system.

In order to make the system useful to large-volume users with internal case management systems, the BCIS should publish and support specifications that allow the law firms' electronic systems to submit data directly to the BCIS

system, without the need for human retyping of information. In addition to receiving electronic information directly, the BCIS system would need to be able to verify successful submittal of the data. This capability would open the door to

large firms integrating their case management systems with the BCIS system, leading to great benefits on both sides. The BCIS should therefore publish in the Federal Register a notice of “negotiated rulemaking” and thereby allow interested parties to participate in the development of acceptable standards. There are a number of mechanisms that could allow for a standard interface between BCIS 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 modify the e-filing system to allow filing through a case management system is well worth it when the massive savings from the much wider use of e-filing are considered.

- 6. The E-Filing System Must Take into Account the Attorney-Client Relationship.** The only way the BCIS e-filing system conceivably provides for a form to be prepared by an attorney and then reviewed by an applicant is if both are in the same room using the same computer at the same time. This is not the norm in the modern client/attorney relationship, and the result is inconvenience for both the applicant and attorney. A form should be available for review and approval by any interested party, which could be provided via a password-protected section of the e-filing website.
- 7. The E-Filing System Should Expressly Address Legitimate Data Privacy Concerns.** The BCIS’ 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). Increasingly, nations and states (such as the European Union and the State of California, among others) are adopting strict standards for the protection from unauthorized use or disclosure of sensitive personal and financial information. If BCIS truly desires wide-spread adoption of e-filing, it must expressly address and assuage the tangible concern of the public and stakeholders that the e-filing submission of sensitive data will only hasten the day when an Orwellian Big Brother (or perhaps rogue elements in government) will abuse the public trust and exploit the use of e-filed data for improper ends.

\*\*\*\*\*

ESIG members believe that electronic filing will significantly reduce administrative costs to the BCIS and free up resources to increase the speed, integrity and volume of adjudications. Therefore, BCIS must adopt measures which encourage as many people and organizations as possible to use e-filing. At present, however, the only tangible

incentive for someone to file electronically is the ability to get a receipt instantly rather than being required to wait for the document to arrive in the mail. This benefit will likely appeal only to a small minority of filers who may have waited until the last minute to meet a filing deadline.

ESIG therefore submits these recommendations as our collective view of how best to stimulate widespread adoption of the electronic filing system and as an immediate step in that direction we encourage the BCIS to consider prioritizing e-filed cases and rewarding e-filers with faster processing times than paper filers. This would cost the BCIS little and give a tangible incentive to using the new system.

ESIG members are encouraged by BCIS' establishment of an electronic filing system for immigration benefits, and are confident that by listening to your constituency and stakeholders, the most effective and efficient system will be developed and the BCIS will benefit greatly (both in its service to the public and its reduction and re-deployment of funds in an era of budget deficits and competing demands on scarce government resources).

Respectfully submitted,

E-filing Standards for Immigration Group

Comments prepared by:

Angelo A. Paparelli, Esq.  
Managing Partner  
Paparelli & Partners LLP

Greg Siskind, Esq.  
Publisher,  
Visalaw.com

Dan Siciliano, Esq.  
Executive Director and  
Lecturer in Law  
Center for Law, Economics  
& Business  
Stanford Law School

Robert C. Meltzer, Esq.  
President  
VisaPrep.com

Greg Walther, Esq.  
President  
Walther Solutions, Inc.

John Fay, Esq.  
Associate Attorney  
Ronald W. Freeman P.C.

Gus Shihab  
Managing Partner  
Shihab & Associates