



**Homeland  
Security**

Office of the  
Citizenship and Immigration Services Ombudsman

U.S. Department of Homeland Security  
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**MOTIONS MATTER:  
IMPROVING THE FILING AND REVIEW PROCESS FOR  
MOTIONS TO REOPEN OR RECONSIDER<sup>1</sup>**

**May 15, 2009**

*The Citizenship and Immigration Services Ombudsman, established by the Homeland Security Act of 2002, provides independent analysis of problems encountered by individuals and employers interacting with the U.S. Citizenship and Immigration Services, and proposes changes to mitigate those problems.*

**I. EXECUTIVE SUMMARY**

The following recommendations address customer and stakeholder concerns and confusion about the filing and review process for motions to reopen and reconsider before U.S. Citizenship and Immigration Services (USCIS). Like an appeal, which is not available in every circumstance,<sup>2</sup> motions to reopen or reconsider provide USCIS customers with an opportunity to obtain review or reexamination of a decision that has already been issued on an application or petition. Motions play an essential role in the USCIS adjudications process, lending an additional measure of quality assurance to USCIS decisions.

The Citizenship and Immigration Services Ombudsman (Ombudsman) has analyzed USCIS motions processing and procedures, and observed a marked variation in local policies at several USCIS offices. The Ombudsman is concerned that applicants and petitioners who file a motion to reopen or reconsider with one USCIS office may, in many cases, receive a different quality of customer service from that offered at other offices. In addition to customer service disparities, insufficient public information on the filing and adjudication of motions and related submissions may place unrepresented customers at a disadvantage in obtaining review of USCIS decisions

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<sup>1</sup> The scope of these recommendations, including the legal authorities and procedures described herein, is limited to motions to reopen or reconsider before U.S. Citizenship and Immigration Services. These recommendations do *not* pertain to motions to reopen or reconsider filed in deportation or removal proceedings before the U.S. immigration courts or the Board of Immigration Appeals (BIA), both part of the U.S. Department of Justice Executive Office for Immigration Review.

<sup>2</sup> Only certain applications and petitions may be appealed to a higher administrative authority. The USCIS Administrative Appeals Office (AAO) has jurisdiction over most applications and petitions. *See* 8 C.F.R. § 103.1(f)(iii) (2003). The BIA has appellate authority over most family-based immigrant petitions filed under section 204 of the Immigration and Nationality Act (INA), including Form I-130 (Petition for Alien Relative), among others. *See* 8 C.F.R. § 1003.1(b)(5) (2008). Other applications and petitions, such as Forms I-751 (Petition to Remove the Conditions of Residence), I-485 (Application to Adjust Status or Register Permanent Residence) filed pursuant to section 245 of the INA, and I-765 (Application for Employment Authorization) cannot be appealed. 8 C.F.R. §§ 216.4(d)(2), 245.2(a)(5)(ii), 274a.13(c) (2008).

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that cannot be appealed to a higher administrative authority. This lack of procedural uniformity and public information adversely impacts USCIS customers.

For these reasons, the Ombudsman recommends that USCIS:

- (1) Establish more uniform filing and review procedures for motions to reopen and reconsider among field offices and service centers by:**
  - (a) Standardizing and clearly articulating to the public the procedures by which an applicant or petitioner may bring a clear Service error to the attention of a USCIS office without incurring the \$585 filing fee<sup>3</sup> for a motion to reopen or reconsider;**
  - (b) Developing and implementing a uniform tracking mechanism for motions to reopen and reconsider; and**
  - (c) Instituting, publishing, and monitoring agency-wide completion goals for the adjudication of motions to reopen and reconsider.**

The Ombudsman additionally recommends that USCIS:

- (2) Communicate the filing and review process for motions to reopen or reconsider more effectively to customers and stakeholders by:**
  - (a) Consistently incorporating standard language on how to file a motion to reopen or reconsider into written denials that cannot be appealed;**
  - (b) Revising the information on motions to reopen and reconsider provided by Tier 1 of the USCIS National Customer Service Center (NCSC); and**
  - (c) Posting on the USCIS website more specific information about the filing and review procedures for motions to reopen and reconsider.**

Adoption of these recommendations would bring more uniformity to the USCIS motions process and enhance USCIS customer service.

## **II. BACKGROUND**

USCIS' authority to reopen proceedings or reconsider a prior decision derives from the U.S. Department of Homeland Security's statutory authority to prescribe regulations on the business

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<sup>3</sup> 8 C.F.R. § 103.7(b)(1) (2008).

and operations of its components.<sup>4</sup> According to the pertinent regulations, a USCIS official having jurisdiction may, for proper cause shown, reopen a proceeding or reconsider a prior decision.<sup>5</sup> A *motion to reopen* must state the new facts to be provided in the reopened proceeding and be supported by affidavits and other documentary evidence.<sup>6</sup> A *motion to reconsider*, on the other hand, must state the reasons for reconsideration of a decision and be supported by pertinent precedent decisions to show that the decision was based on an incorrect application of law or USCIS policy.<sup>7</sup> Notwithstanding their substantive difference in purpose, motions to reopen and motions to reconsider are procedurally similar under the regulations.

## Motions Procedures

### *I. Motions to Reopen or Reconsider*

To file a motion to reopen or reconsider, an applicant or petitioner<sup>8</sup> must submit Form I-290B (Notice of Motion or Appeal) along with a \$585 nonrefundable filing fee.<sup>9</sup> Those who cannot afford the fee may request a fee waiver by demonstrating an inability to pay.<sup>10</sup> The form and the fee or fee waiver request must be filed with the USCIS office that adjudicated the original case<sup>11</sup> within 30 days<sup>12</sup> of the date of the decision to be reopened or reconsidered. A USCIS officer has the discretion to excuse a failure to comply with the 30-day filing deadline in cases where the delay was reasonable and beyond the control of the filer.<sup>13</sup> Motions that do not comply with the filing requirements must be dismissed in a writing detailing the deficiencies.<sup>14</sup> In such cases, “the fee will not be refunded unless it is determined that there was USCIS error involved in submitting the motion.”<sup>15</sup>

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<sup>4</sup> See 5 U.S.C. §§ 301, 552, 552a; 8 U.S.C. §§ 1101, 1103, 1304, 1356; 31 U.S.C. § 9701; Homeland Security Act of 2002, § 102(e), Pub. L. No. 107-296.

<sup>5</sup> 8 C.F.R. § 103.5(a)(1)(i) (2008).

<sup>6</sup> 8 C.F.R. § 103.5(a)(2) (2008). Applicants and petitioners may file a motion to reopen any application or petition, with certain exceptions. See 8 C.F.R. § 103.5(a)(2)(i)-(iii) (2008) (detailing additional requirements for filing a motion to reopen when USCIS denies a case due to abandonment); 8 C.F.R. § 103.5(b)-(c) (2008) (relating to special agricultural worker and legalization applications, and replenishment agricultural worker petitions).

<sup>7</sup> 8 C.F.R. § 103.5(a)(3) (2008).

<sup>8</sup> The regulations do not accord beneficiaries of visa petitions the right to pursue a motion to reopen or reconsider before USCIS. See 8 C.F.R. § 103.3(a)(1)(iii)(B) (2008).

<sup>9</sup> 8 C.F.R. §§ 103.5(a)(1)(iii)(B), 103.7(b)(1) (2008). Notwithstanding the regulatory requirement that motions be filed on Form I-290B, some field offices also accept motions on letterhead. In addition, Form I-290B (or any other DHS form) and the filing fee *are not required* for motions to reopen or reconsider asylum decisions. USCIS Affirmative Asylum Procedures Manual, Section III.M.2, “Asylum Office Processing of a Motion” (Nov. 2007).

<sup>10</sup> 8 C.F.R. § 103.7(c)(5)(i) (2008).

<sup>11</sup> 8 C.F.R. § 103.5(a)(1)(ii)-(iii) (2008).

<sup>12</sup> 8 C.F.R. § 103.5(a)(1)(i) (2008). If the decision was sent by mail, the applicant or petitioner must submit the motion within 33 days of the date of the decision. See 8 C.F.R. § 103.5a(b) (2008).

<sup>13</sup> 8 C.F.R. § 103.5(a)(1)(i) (2008).

<sup>14</sup> 8 C.F.R. § 103.5(a)(4) (2008); USCIS Adjudicator’s Field Manual (AFM), Chapter 10.17(b), “Motions to Reopen or Reconsider: Motion Filed by Applicant or Petitioner” (Mar. 2009).

<sup>15</sup> AFM, Chapter 10.17(b), “Motions to Reopen or Reconsider: Motion Filed by Applicant or Petitioner” (Mar. 2009). Although the regulations mandate that motion fees are nonrefundable, USCIS field guidance clearly permits refunds in certain cases. *Id.*; cf. 8 C.F.R. § 103.5(a)(1)(iii)(B) (2008).

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Once an adjudicator denies an application or petition, the local office generally holds the file pending the submission of a motion or an appeal.<sup>16</sup> Upon receipt of a motion to reopen or reconsider, the office will process the filing fee or fee waiver request. Some offices will then match the motion to the A-File without generating a receipt number. Other offices will create and issue a separate receipt number for the motion. After the motion is placed in the file, it is ordinarily reviewed by the same officer who originally decided the case.<sup>17</sup> Depending on local office policy, a different officer may adjudicate the motion if the initial decision maker is unavailable. Alternatively, some offices may forward motions to supervisory adjudicators or to a specially designated motions unit for adjudication.<sup>18</sup>

Consideration of a motion is a two-step process.<sup>19</sup> First, a USCIS officer determines whether there are grounds to reopen the proceeding or reconsider the decision. Then, if the proceedings are reopened or the previous decision is reconsidered, the officer must render a new decision. If the officer reopens or reconsiders for the purpose of approving the application or petition, the notice of reopening or reconsideration and the favorable decision may be combined.<sup>20</sup>

In addition to entertaining motions filed by applicants and petitioners, USCIS may at any time reopen a proceeding or reconsider a decision on its own motion.<sup>21</sup> In many cases, USCIS utilizes Service motions to correct USCIS errors and may employ them to approve a case, notify a customer of the intent to deny a case, or clarify the language of a previous decision.<sup>22</sup> Depending on local office policy, an adjudicator may also reopen or reconsider a case on a Service motion where the adjudicator finds that an inexcusably late-filed motion has merit.<sup>23</sup>

Unlike an appeal, a motion to reopen or reconsider does not generally stay the execution of a decision in a case or extend a previously set departure date from the United States.<sup>24</sup> In other words, the filing of a motion to reopen or reconsider does not forestall the consequences of a

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<sup>16</sup> Depending upon local procedures, denied cases may be held in abeyance until a motion or an appeal is filed, or the motion/appeal filing period lapses. Alternatively, the case file may be sent to another office for follow-up action. *See* AFM, Chapter 10.3(h), “General Adjudication Procedures” (Mar. 2009). The length of time an office will hold the file for a denied case varies. Many offices, however, wait at least 30 days for a motion or an appeal before forwarding the file for further action.

<sup>17</sup> AFM, Chapter 10.17(a), “Motions to Reopen or Reconsider: General” (Mar. 2009).

<sup>18</sup> Some offices forward motions to more experienced adjudicators or supervisors because of the often complex factual and legal issues presented. They also use experienced adjudicators to track the reasons for motions and identify training issues that may require attention. Other offices do not assign the motion to the original adjudicator to ensure neutrality of the decision.

<sup>19</sup> AFM, Chapter 10.17(b), “Motions to Reopen or Reconsider: Motion Filed by Applicant or Petitioner” (Mar. 2009).

<sup>20</sup> 8 C.F.R. § 103.5(a)(4) (2008).

<sup>21</sup> 8 C.F.R. § 103.5(a)(5) (2008).

<sup>22</sup> AFM, Chapter 10.17(b), “Motions to Reopen or Reconsider: Motion Filed by Applicant or Petitioner” (Mar. 2009).

<sup>23</sup> According to the internal guidance one field office provides to its adjudicators, a motion filed outside of the deadline should not be immediately rejected. Rather, an officer should review and consider late-filed but potentially meritorious motions to determine whether the case can be reopened on a Service motion.

<sup>24</sup> 8 C.F.R. § 103.5(a)(1)(iv) (2008).

USCIS decision and has no effect on the disposition of the case unless the motion is granted. An appeal, on the other hand, effectively puts the disposition of a case on hold until the appeal is resolved.

## 2. *Appeals*

Motions to reopen or reconsider may also play a role in certain appeals processes. An appeal must identify specifically any erroneous conclusion of law or statement of fact.<sup>25</sup> Most appeals to the Administrative Appeals Office (AAO) require eligible customers to file Form I-290B and a \$585 filing fee with the USCIS office that issued the original decision.<sup>26</sup> Customers must file the Form I-290B appeal within 30 days of the date of the USCIS decision.<sup>27</sup> Untimely appeals may be treated as motions to reopen or reconsider if the appeal satisfies the substantive requirements for a motion to reopen or reconsider.<sup>28</sup>

When an office receives a Form I-290B appeal, it must review the complete case to determine whether the arguments presented clearly overcome the reasons for denial.<sup>29</sup> If within 45 days of filing the appeal, the office determines that the appeal is meritorious, it may treat the appeal as a motion to reopen or a motion to reconsider and approve the case.<sup>30</sup> If after 45 days, the office finds the appeal meritorious, it may reopen or reconsider the case on a Service motion.<sup>31</sup> If the arguments fail to clearly overcome the basis of the denial, the office must “promptly” forward the appeal to the AAO for review.<sup>32</sup>

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<sup>25</sup> 8 C.F.R. § 103.3(a)(1)(v) (2008).

<sup>26</sup> 8 C.F.R. §§ 103.3(a)(2), 103.7(b) (2008). The form type for an appeal depends on the application or petition originally filed. For example, the AAO is also vested with the authority to adjudicate appeals of legalization cases under sections 210 or 245A of the INA. Those appeals require the filing of Form I-694 (Notice of Appeal of Decision under Section 210 or 245A) and a \$545 filing fee. 8 C.F.R. § 103.7(b) (2008).

<sup>27</sup> 8 C.F.R. § 103.3(a)(2) (2008). If the decision was sent by mail, the applicant or petitioner must submit the motion within 33 days of the date of the decision. *See* 8 C.F.R. § 103.5a(b) (2008).

<sup>28</sup> 8 C.F.R. § 103.3(a)(2)(v)(B)(2) (2008).

<sup>29</sup> AFM, Chapter 10.8(a)(1), “Preparing the Appellate Case Record: Administrative Appeals Office (AAO) Cases” (Mar. 2009).

<sup>30</sup> 8 C.F.R. § 103.3(a)(2)(iii) (2008). An appeal can only be treated as a motion to issue a favorable decision. *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> 8 C.F.R. § 103.3(a)(2)(iv) (2008); AFM, Chapter 10.8(a)(1), “Preparing the Appellate Case Record: Administrative Appeals (AAO) Cases” (Mar. 2009). The regulations and USCIS field guidance do not make clear what constitutes “promptly” for purposes of forwarding an appeal to the AAO. However, prompt forwarding may depend on the manner in which a USCIS office processes motions and appeals. The National Benefits Center (NBC), for example, treats appeals as a priority. If an officer finds no grounds to reopen or reconsider the decision, the appeal usually will be forwarded to the AAO within two to three weeks. Other offices do not prioritize appeals or fully monitor the length of time it takes to forward appeals to the AAO. At least one field office informed the Ombudsman that it has been unable to forward appeals to the AAO as promptly as it would like due to its focus on lowering processing times for other form types.

### Problems Encountered by USCIS Customers in the Current Motions Process

The Ombudsman has observed through case problems, correspondence, and a public teleconference<sup>33</sup> that motions processing and procedures are not well understood by the USCIS customer community. Much of the confusion appears to stem from the complexity of the relevant legal authorities, unarticulated processing variations among USCIS offices, and informational deficiencies regarding the filing, intake, and review process. While some procedural flexibility may be useful to respond to unique local conditions, the lack of procedural uniformity across offices diminishes the overall quality of USCIS customer service, as discussed in the sections below.

#### *1. Correcting Clear Service Error<sup>34</sup>*

Rectifying clear Service error is a recurring customer and stakeholder concern. Filing and paying for a formal motion to reopen to correct clear Service error is costly<sup>35</sup> and potentially time consuming. In addition, because refund procedures vary by office,<sup>36</sup> formal motions may unfairly shift the financial burden to correct a clear Service error to USCIS customers.

To circumvent the filing fee, some customers send written requests asking a USCIS office to reopen or reconsider a case on a Service motion. However, not every office accepts these requests.<sup>37</sup> For the offices that do, these submissions are generally treated as correspondence and may not be addressed within 30 days. As a result, if USCIS determines that there was no

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<sup>33</sup> Ombudsman Teleconference, “Motions to Reopen: How Are They Working for You?” (Jan. 28, 2009).

<sup>34</sup> While formally defining “clear Service error” presents a significant challenge given the breadth of possible interpretations, USCIS has previously provided examples of what it has described as “obvious error” by the agency. “Adjustment of the Appeal and Motion Fees to Recover Full Costs,” 70 Fed. Reg. 50954 (Aug. 29, 2005). Obvious errors include an erroneous determination that an appeal or motion was not timely filed, or an improper finding relating to statutory eligibility such as age or marital status. *Id.* USCIS officials have also provided the Ombudsman with two specific examples of clear Service error that directly result in the denial of an application or petition: (1) Validity data errors, which usually result from the inadvertent transposition of numbers relating to biographical or other information; or (2) scheduling mistakes. Scheduling mistakes may occur when an individual fails to appear for an interview or biometrics appointment after USCIS schedules the appointment without timely notifying the individual.

<sup>35</sup> The following case problem received by the Ombudsman typifies the financial consequences of correcting clear Service error through the filing of a formal motion. A U.S. citizen petitioner filed Form I-129F (Petition for Alien Fiance(é)) along with a \$455 filing fee. Several months later, the petitioner appeared for a biometrics appointment at a local Application Support Center pursuant to a formal USCIS request. Many months after that, USCIS denied the petition on the grounds that the petitioner failed to appear for his biometrics appointment. The petitioner filed a motion to reopen the proceedings along with the \$585 filing fee to correct the administrative error. Upon receipt of the motion, USCIS reopened the case to re-adjudicate the petition on the merits.

<sup>36</sup> The NBC has confirmed that it will refund filing fees in cases of verified clear Service error. At some field offices, however, an applicant or petitioner must specifically request a refund of the filing fee, regardless of whether USCIS was in error, in order to initiate the refund process. Still, at other field offices, the decision to initiate the refund process is within the discretion of the adjudicating officer, pending approval by the Field Office Director.

<sup>37</sup> The NBC, for example, no longer accepts Service motion requests and instead requires that motions be filed on a Form I-290B with the \$585 filing fee. As noted above, the NBC will refund the filing fee in cases of clear Service error.



clear Service error in the disputed decision, an applicant or petitioner will likely have lost his or her opportunity to formally file a motion unless the adjudicating officer waives the filing deadline.<sup>38</sup> In an effort to obviate this risk, one field office recently instituted a policy to adjudicate Service motion requests within ten days. Customers at that office now have the benefit of correcting clear Service errors in a timely manner without incurring the filing fee. Additionally, if that office determines that no clear Service error exists, customers still have time to file a formal motion to reopen or reconsider.

Another option to correct a clear Service error without incurring a motion filing fee is to informally advise USCIS of the error. At a field office, applicants or petitioners may inform USCIS of clear Service error in person through an INFOPASS appointment or through stakeholder organizations that bring meritorious cases to the attention of USCIS via email or liaison meetings. At service centers, stakeholders can utilize liaison channels to inform USCIS officials of clear Service error. Notwithstanding the availability of these options at most USCIS offices, some offices have expressed to the Ombudsman a preference that motions and requests for Service motions be filed in writing.

Even though there are several ways to correct clear Service error, local variations in motions and other related procedures are resulting in disparities in the quality of customer service across USCIS offices. Some customers pay \$585 to correct clear service error by filing a formal motion to reopen or reconsider, and may obtain a fee refund upon verification of the error. However, due to inconsistent refund procedures, others may not necessarily obtain a fee refund based on clear Service error even if they technically qualify for one.<sup>39</sup> Meanwhile, some offices will reexamine its decisions without the motion filing fee through the submission of Service motion requests alleging clear Service error. Among those offices, some expedite Service motion requests over formally filed motions, while others may not reach a Service motion request before the expiration of the filing deadline for a formal motion. These customer service disparities will persist if USCIS does not standardize and articulate the procedures by which an applicant or petitioner may bring a clear Service error to the attention of USCIS.

## *2. Tracking the Status of Motions*

Disparities in USCIS customer service are also evident in a customer's ability to obtain proof of filing and tracking for motions. While receipting technology exists at the service centers and at some field offices,<sup>40</sup> other USCIS offices do not have the capability to generate and issue receipt notices for motions and appeals.<sup>41</sup> As a result, those customers may face greater challenges in

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<sup>38</sup> See 8 C.F.R. § 103.5(a)(1)(i) (2008).

<sup>39</sup> See AFM, Chapter 10.10: "Refund of Fees" (Mar. 2009).

<sup>40</sup> Select field offices have developed home-grown receipting technology, which is used to track motions locally. Evidently, local receipt numbers may be supplied to the USCIS NCSC, which, upon customer inquiry, can use the number to submit a service request to the local office.

<sup>41</sup> Instead, proof of filing may come in the form of a cash receipt, if the applicant or petitioner filed in person, or a postal service delivery confirmation and evidence of payment, if filed by mail. At least one field office issues an acknowledgement notice that serves as proof that a motion has been filed with that office.

inquiring about the status of their submissions. In an effort to address these challenges, USCIS recently instituted a policy that allows applicants and petitioners to call the NCSC to place a service request for any motion that has been pending more than 90 days.<sup>42</sup>

At least two USCIS offices utilize the Chicago Lockbox for fee intake and receipting, which may better facilitate a customer's ability to track the status of a motion. While the regulations and the instructions accompanying the Form I-290B require customers to file with the office that originally adjudicated the case,<sup>43</sup> at least one field office requests its customers to file with the National Benefits Center (NBC). The NBC sends those motions to the Chicago Lockbox for fee intake and receipting, and then forwards the motions to that field office for adjudication. For motions filed on decisions that the NBC made, the NBC encourages its customers to file the Form I-290B directly with the Chicago Lockbox for fee intake and receipting.<sup>44</sup> The NBC has indicated to the Ombudsman that filing with the Chicago Lockbox has improved the quality of motions processing because the Lockbox provides a single repository for fee intake and receipting.

### *3. Obtaining Timely Resolution of Motions*

Many USCIS offices grapple with the balance between speedy resolution and proper adjudication of fact-specific and often legally complex motions. Additional delays may occur if a file has been archived or forwarded for further action to another USCIS office. These issues aside, the length of time it takes for USCIS to adjudicate a motion still varies by office. According to case problems submitted to the Ombudsman and anecdotal customer reports, some motions have languished at certain offices for many months to more than a year,<sup>45</sup> while other offices have completed motions in several weeks.

This discrepancy in processing times among offices appears to stem from local office policies. Several USCIS offices have imposed 30 to 90-day completion goals for motions to reopen or reconsider. Other offices, however, do not set estimated deadlines for completion and may not give priority to motions and appeals due to a focus on other workload demands.

Lengthy processing times for motions may detrimentally affect USCIS customers. For example, the denial of Form I-485 (Application to Adjust Status or Register Permanent Residence) may also result in the revocation of ancillary benefits associated with the application, including the ability to work.<sup>46</sup> Assuming that a motion to reopen or reconsider the denial of Form I-485 has

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<sup>42</sup> "Questions and Answers from January 28, 2009 Teleconference on Motions to Reopen: How Are They Working for You?" (May 7, 2009); [http://www.dhs.gov/xabout/structure/gc\\_1236024971749.shtm](http://www.dhs.gov/xabout/structure/gc_1236024971749.shtm) (accessed May 13, 2009).

<sup>43</sup> See 8 C.F.R. § 103.5(a)(iii)(E) (2008).

<sup>44</sup> If a motion and fee are received at the NBC, the NBC will forward the motion and fee to the Lockbox for fee intake and receipting.

<sup>45</sup> In a case problem submitted to the Ombudsman, USCIS denied a customer's Form I-485 (Application to Adjust Status or Register Permanent Residence). The customer filed a timely motion to reopen and the \$585 filing fee with the USCIS office that adjudicated her application. More than a year later, the office has not taken action on the motion to reopen.

<sup>46</sup> See 8 C.F.R. §§ 274a.12(c)(9); 274a.14(b)(1)(i) (2008).



merit, the faster the motion is favorably adjudicated, the faster the applicant may be authorized to return to work.

#### *4. Overcoming Other Informational Obstacles*

Disparate access to and a lack of information on the filing and review process for motions to reopen and reconsider may significantly disadvantage unrepresented customers. For example, written denials do not always notify customers who have no appellate recourse of the option to file a motion to reopen or reconsider. The Adjudicator's Field Manual (AFM) and the regulations do not appear to require that officers include information about motions to reopen or reconsider in their written denials. Instead, some denials only inform customers that the decision cannot be appealed. This may lead inexperienced do-it-yourself customers to conclude that no further action can be taken to dispute the denial. In addition, Tier 1 of the NCSC advises inquiring customers of their ability to file a motion to dispute a denial, but misinforms them that no USCIS form exists to file the motion.<sup>47</sup> Meanwhile, other offices regularly include in written denials information about how to file a motion to reopen or reconsider as well as a copy of Form I-290B.

### **III. ANALYSIS**

In view of the problems described above, the Ombudsman has developed recommendations to bring more uniformity to the motions process and enhance USCIS customer service.

The Ombudsman recommends that USCIS:

- (1) Establish more uniform filing and review procedures for motions to reopen and reconsider among field offices and service centers by:<sup>48</sup>**
  - (a) Standardizing and clearly articulating to the public the procedures by which an applicant or petitioner may bring a clear Service error to the attention of a USCIS office without incurring the \$585 filing fee for a motion to reopen or reconsider;**

Currently, local procedures to bring clear Service error to the attention of a USCIS office lack uniformity. Clearly articulating to the public more uniform, customer-friendly filing procedures would minimize disparities in the quality of USCIS' customer service.

- (b) Developing and implementing a uniform tracking mechanism for motions to reopen and reconsider; and,**

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<sup>47</sup> Specifically, Tier 1 of the NCSC tells customers, "[t]here is no form for a motion, but it must be in writing."

<sup>48</sup> Given the different roles field offices and service centers play in the immigration benefits process, complete uniformity of motions processing and procedures may not be feasible. However, among each type of office, USCIS should create standardized filing and review procedures to ensure that all customers have access to the same procedures involved in USCIS motions practice.

A uniform receipting and tracking mechanism would ensure that all customers are able to obtain official proof of filing for a motion to reopen or reconsider, and provide filers and USCIS the means to more efficiently track the status of motions.

**(c) Instituting, publishing, and monitoring agency-wide completion goals for the adjudication of motions to reopen and reconsider.**

Implementing agency-wide completion goals for motions to reopen or reconsider would provide customers with a general estimated processing time for motions and permit sufficient flexibility at the local office level to take more time to review particularly complex cases. In addition to ensuring that cases will be completed timely, public knowledge of these completion goals would provide USCIS' customer base with some assurance that motions will not unnecessarily languish due to a focus on other workload demands.

The Ombudsman additionally recommends that USCIS:

**(2) Communicate the filing and review process for motions to reopen or reconsider more effectively to customers and stakeholders by:**

**(a) Consistently incorporating standard language on how to file a motion to reopen or reconsider into written denials that cannot be appealed;**

Consistently providing motion filing information in written, unappealable denials would ensure that customers have equal access to the USCIS motions process.

**(b) Revising the information on motions to reopen and reconsider provided by Tier 1 of the USCIS National Customer Service Center (NCSC); and,**

To reduce customer confusion, USCIS should revise the information provided by the NCSC to ensure that it accurately reflects the filing requirements contained in the regulations and the AFM.

**(c) Posting on the USCIS website more specific information about the filing and review procedures for motions to reopen and reconsider.**

The USCIS website is a powerful tool of communication. Specifically incorporating motion filing and review information into the "How Do I?" section of USCIS' website and the online glossary, for example, would better educate USCIS customers and improve compliance with the filing requirements for motions. Including specific information on the USCIS website would also reduce confusion regarding the differences between motions and appeals. Where necessary, USCIS should also publish local variations in motions processing on local office web pages.

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#### **IV. CONCLUSION**

Increased uniformity of motions procedures and enhanced communication with customers will improve customer service and strengthen the integrity of the USCIS adjudications process.