

From: Paparelli, Angelo

Sent: Friday, January 05, 2018 1:14 PM

To: 'kevin.j.cummings@uscis.dhs.gov' <kevin.j.cummings@uscis.dhs.gov>; Mariela Melero (mariela.melero@dhs.gov) <mariela.melero@dhs.gov>

Subject: Recent blog post/suggestion for improved stakeholder engagements/email for USCIS Director Cissna

Importance: High

Hello Kevin and Mariela,

I hope you both enjoyed the holidays, and look forward to a happy and healthy 2008. I write about three topics.

1. Blog post an article. I thought you might find interesting my latest blog post:

[Revanchist Immigration: The Aftermath of “Buy American, Hire American”](#)

Please understand that, while my posts often use provocative language, I genuinely respect and hold in high regard so many of the leaders and officers of USCIS (yourselves of course included) whom I have been fortunate to have come to know over the years. I view us as not so much adversaries as good-faith participants and stakeholders who strive to abide by the rule of law and try to achieve justice in an especially complex area of American jurisprudence. In that regard, I think you might also find interesting this article [[“Looking Back, Looking Ahead: An Immigration Lawyer’s Perspective”](#)] from my friend and colleague, [Laura Danielson](#), who now serves as the President of the [Alliance of Business Immigration Lawyers](#)[.]

On another point, I had the pleasure of meeting last year with Mariela and her team to discuss ways to help achieve Director Francis Cissna's stated objectives of promoting transparency, effectiveness, and the rule of law. Many of my suggestions and observations at our meeting were directed at ways of improving transparency and effectiveness at USCIS. I also noted that the President and the Executive Branch are fully justified in determining and implementing their visions and public policy objectives, subject of course to our constitutional system, existing legislation and regulations, and the reliance interest of the public and immigration stakeholders in receiving reasonable and understandable notice in advance when prior agency interpretations are slated to change.

2. Stakeholder Engagements. One of the suggestions I made involved improvements to the USCIS public engagements. I offered the view that some past engagements proved to be disappointing and of only marginal value. A fair number had devolved into unanswerable questions from beneficiaries of petitions for immigration benefits who discussed individual cases or raised questions that were irrelevant to the stated subject of the engagement. In other situations, I observed that USCIS representatives for unknown reasons simply ignored many written questions submitted in advance (my own included), or mischaracterized a questioner's comment or query as too particularized (i.e., with an A number attached) when in fact the stakeholder was raising an issue of broad application to many stakeholders.

With the objective of making these engagements more meaningful, I suggested that new formats should be piloted. For example, an engagement could feature a rotating panel of well-regarded immigration lawyers possessing subject-matter expertise, and possibly also include representatives from the USCIS Office of the Ombudsman, who would together pose questions (some of which would have been submitted in advance) on subjects that could be preplanned and coordinated with USCIS participants before the engagement, while nonetheless leaving a smaller segment of time to live questioning from the audience. I hope you will consider this alternative. Please share with me your thoughts.

3. Email to USCIS Director Cissna. At the conclusion of my meeting with Mariela, I asked if I could send an email to Director Cissna and share my views. Mariela instead invited me to send the email to her, and that upon its receipt, she would make sure that Director Cissna receives it. She also anticipated that he would respond to my letter. Here then is my email:

Dear Director Cissna:

Congratulations on your appointment to serve in such an important position and play a critical role in DHS leading some 19,000 government employees and contractors stationed at 223 offices worldwide. I hope you remember that we met informally several years ago over coffee and discussed a wide-ranging mix of immigration public policy questions and the proper functioning of DHS and its three immigration components. You struck me then as a committed public servant and intelligent lawyer working within DHS to get immigration right. More recently, I was asked to write an [article for EB-5 stakeholders](#) in which I sought to foretell how you and USCIS Ombudsman Julie Kirchner, would engage together in advancing the EB-5 program and overarching DHS goals. Frankly, my editors were concerned that each of your past positions created apprehension in the stakeholder community that the EB-5 program and its goals of job creation, economic development, and the generation of tax receipts might be at risk. In the article, I described each of you as "talented and accomplished lawyers," and reminded readers that under rules of legal ethics, "a lawyer's representation of a client . . . does not constitute an endorsement of the client's political, economic, social or moral views or activities." I thus urged EB-5 stakeholders to accord both of you "respect and confidence, consistent with existing rules of professional responsibility, that the views of [your] former employers are not necessarily predictive of [your] future policies." Since then, reports of your remarks at the USCIS Ombudsman's annual conference have confirmed my view. I'm particularly heartened by your statement that USCIS will favor rulemaking over less formal policy announcements as the preferred way to inform stakeholders of agency interpretations.

Before you arrived at USCIS, the business community and other stakeholders often were surprised by announcements of material changes in procedure or policies with little or no forewarning. Here are some examples:

- The announcement last March that expedited Premium Processing Services would be suspended for H-1B cases subject to the annual lottery beginning in April (leaving little time to change prearranged plans for employee foreign travel made on the assumption that premium processing would be available, causing lost time and unnecessary burden for those who had already prepared Premium Processing forms and checks for filing fees);
- The announcement last April after USCIS began to accept H-1B cases for the annual lottery that computer programmers paid at DOL prevailing-wage Level I would no longer qualify for H-1B visas, despite a prior agency interpretation to the contrary (meaning that scarce H-1B visa numbers would be lost forever when these now-ineligible cases are inevitably denied);
- The lack of announcement that this type of prevailing-wage Level I analysis denying H-1B eligibility would be extended to other occupations; and
- The lack of announcement that Advance Parole renewal applications would be treated as abandoned if the applicant traveled abroad on a pre-existing, unexpired Advance Parole document.

My hope is you will commit to stakeholders that USCIS will be more transparent and timely in its external communications so that abrupt changes and surprises like these will not recur, and immigration stakeholders can plan reliably in the future. Unfortunately, it seems that current trends continue to disappoint. Too many novel interpretations of immigration law requirements are disclosed through informal sharing among colleagues of redacted requests for additional evidence and denial notices, and too many updates to the USCIS Policy Manual are inserted without prior opportunity for comment. In addition, USCIS is reportedly changing the way it interacts with Congressional staff by requiring constituents seeking help with immigration cases to sign a waiver of attorney representation.

As lawyers, we can and should do better than that. I hope you agree that collaboration, transparency, program effectiveness and integrity, and predictability of outcome are preferable to resolvable disputes that may needlessly end up as APA actions where neither side has any assurance of a favorable outcome.

In writing to you, my purpose is to encourage you to open an ongoing dialogue with the bar, and engage collaboratively in tackling the daunting tasks ahead, while preserving American exceptionalism and heritage as a nation of immigrants. I welcome your thoughts on the points I have raised. And again, congratulations on your new assignment. All the best.

