



January 26, 2004

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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Memorandum

TO : District Directors and Officers in Charge
Southern Region

SR 79/3-C
DATE: April 21, 1980

FROM : Durward E. Powell, Jr., Regional Commissioner
Dallas, Texas

SUBJECT: Dispensing of Information and Adjudications Decision Making

While Chapter II, Immigration Inspector Handbook, sets forth pertinent and excellent guidance for Service adjudicators, it does not touch fully upon attitudes or the manner in which adjudicators should view the decision-making process. Admittedly, each individual differs in some small way from every other individual in getting the job done.

The purpose of this communication is to share with you my personal approach to dispensing information and to adjudications decision making. Your understanding of my views could be helpful to all of us in terms of avoiding misunderstandings in the future, and will provide a base from which you may know my expectations of each of you. It is important to establish two personal concepts of mine which will be points of continuing reference for you. My INS experience has taught me that most of INS Examinations clientele are honest, hard-working people, not interested in fraud or obtaining any benefit for which they cannot qualify; and second, I demand objectivity and professionalism on the job, not only from myself but from each of you.

All of this leads me to the point of this writing. Attitudes toward our clientele and adjudications decision making, in some instances, in this Region are not realistic nor justifiably correct. Adjudicators, Inspectors and information employees are not guardians of the treasury of information on Immigration benefits, whose function is to dispense reluctantly that narrow portion of the treasury which relates to a specific inquiry. Rather, all of us are, or should be, dispensers of total information tailored to the entirety of each applicant's situation. Tell them freely and openly not only what they are not eligible for, but what they may be eligible for.

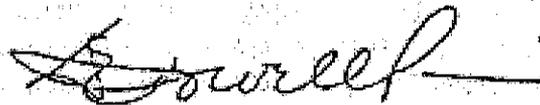
The decision maker in adjudicating applications and petitions should not attitudinally approach the process, either consciously or unconsciously,



in an adversary manner or looking for a reason to deny. Rather, we should all, with our broad knowledge of law and policy, approach them attitudinally, in a friendly professional manner, looking for a way to approve them. With this philosophy, when we have to deny because we cannot approve, we have truly accomplished our decision-making mission, leaving the applicant convinced that all facts in his favor have been fully explored. All of our denials will then stand alone and we can take pride in the true objectivity of such decisions.

I ask each of you to join with me in this line of thinking. The individual reward of self-satisfaction will more than compensate for any attitudinal change you may have to make. The effect of total Regional thrust along this philosophical line will result in better decisions, fewer appeals, and greater productivity.

Copies of this memorandum should be furnished by each of you to every employee in your jurisdiction who is engaged in the above activities.



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