

# National Employment Law Project

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Delivering Economic Opportunity

January 28, 2009

Honorable Bennie G. Thompson, Chairman  
House Committee on Homeland Security  
Honorable Loretta Sanchez, Chairwoman, House Committee on Homeland Security  
Subcommittee on Border, Maritime and Global Counterterrorism  
U.S. House of Representatives  
Washington, DC 20515

## Re: TWIC Program Reform Prior to April 15, 2009 Compliance Date

Dear Chairman Thompson and Subcommittee Chairwoman Sanchez:

We write to thank you for your continued attention to the difficulties faced by port workers going through the TWIC application, appeal and waiver process, and to encourage you to keep seeking improvements to the program as we enter the critical final months of the initial enrollment period. Our suggestions are informed by our in-depth work with TWIC applicants since enrollment began in October 2007. We have represented and spoken with over 400 workers thus far as part of our ongoing work to help ensure that qualified workers are not needlessly shut out of employment, particularly during these grave economic times.

We know you share our concerns in particular about the many people who are out of work because of TSA delays in processing applications, appeals, and waivers. We know of many people in ports that have already gone into compliance who are out of work and waiting anxiously for a response from TSA regarding their TWIC. Some of these individuals applied more than 60 days ago and have yet to hear back from TSA. Others submitted appeals or requests for waivers that have not been adjudicated within the 60-day period established in the final TWIC rule. In addition, still others applied, but by the time they heard back from TSA and assembled all of the documents they needed for a waiver request, several months had passed and they were unable to obtain approval before their port's compliance date.

For example, two of our clients, Willie Battise and Fred Knight, have been out of work for almost two months because they work at the Port of Savannah, which went into compliance December 1, 2008. Mr. Battise applied for a TWIC in February 2008, received an initial denial in March 2008, and requested a waiver in April 2008. He was informed in December 2008 that he needed to provide additional documentation to supplement his waiver application. He provided that documentation in early December and has not received a response from TSA to date. Similarly, Mr. Knight received an initial denial in May 2008, applied for a waiver, and was informed in late November 2008 that he needed to supplement his waiver application. He also did so in early December, and has yet to hear back from TSA as to whether the request will be granted. While we commend TSA for attempting to obtain supplemental information needed to consider these TWIC waiver applications, we bemoan the fact that these workers have been unable to work for months due to these processing delays. Their families' hardship grows by the day.

We strongly encourage the Committee and Subcommittee to seek immediate reforms of the TWIC program to reduce the number of workers turned down and forced out of work due to TWIC processing and adjudication delays in the next three months. Specifically:

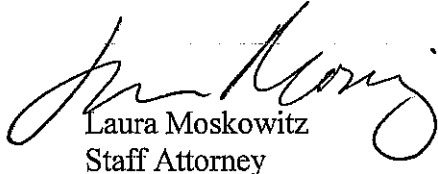
- (1) **TSA should increase staffing of the TWIC adjudication office with Coast Guard and/or other additional staff.** Only by hiring additional staff will TSA be able to meet basic program expectations of conducting initial security threat assessments within 30 days and adjudicating appeals and waivers within 60 days. Current wait times of 8-10 weeks for initial determinations of threat assessment create downstream delays for workers who need to file appeals or seek waivers. At this point, if current wait times continue unabated, any worker who has not yet applied and will have an immigration/citizenship issue or criminal record issue will be out of work by April 15<sup>th</sup>, if not earlier. These workers cannot possibly realize how long it will take to get through the enrollment process, and how long their families will have to endure wage losses while their TWIC application is pending. Moreover, the nation's ports need to be fully staffed with TWIC-holders so that the flow of commerce will not be disrupted. **With additional staffing, TSA should:**
  - a. **Process all initial applications within 30 days.**
  - b. **Review all appeals and waivers submitted to the adjudication office and notify the worker within 30 days after receipt if additional documentation is required.**
  - c. **Adjudicate all appeals and waivers within the 60-day period set forth in the regulations, and notify workers regarding the cause of any delay and the estimated date on which the applicant can expect to receive a response from TSA if it will be longer than 60 days.**
  
- (2) **TSA should take simple, proactive steps to reduce the number of erroneous denials issued, and the need for workers to file appeals.** TSA's cursory criminal history record review, which is limited to whatever appears on the face of an applicant's FBI rap sheet, is not -- as the law requires -- a true screening for disqualifying felony convictions. The success rate for these types of appeals is close to 99%, which shows that the current screening process is unfairly denying far too many workers. Workers should not have to bear the burden of this inefficient system and its concomitant delays. Instead, TSA should prioritize tracking down missing dispositions for old arrests before issuing an initial denial. For example, any case that has been pending in the court system for more than one or two years without a disposition is far more likely to have been dismissed. TSA should also prioritize cases like drug offenses, weapons charges, and robberies, which routinely result in non-felony convictions, and should confirm that any conviction that does not show up as a felony on the FBI rap sheet is actually a felony before issuing an initial denial. Similarly, in all cases where an applicant has indicated on the enrollment form that he or she has been released from incarceration more than five years before the date of the TWIC application, TSA should verify the release date with state corrections authorities instead of simply denying the application based on the original sentence imposed. The current review structure could be altered easily to incorporate these basic checks.

- (3) **TSA should track applications, appeals and waivers by port compliance date.** TSA is not currently prioritizing security threat assessments, appeals or waivers according to port compliance date, which means that some workers from ports that have already gone into compliance are unable to work while workers who do not need TWICs yet are being processed in the order received. This system causes needless hardship for working families, and should be reformed immediately.
  
- (4) **The Coast Guard should enable Captains of the Port to extend unescorted access to ports for individuals who have applied for TWIC cards and have been approved, in accordance with the standards outlined in the TWIC/MTSA Policy Advisory Council "TWIC Activation & Fingerprint Reject Impacts – Limited Equivalent Security Measure 07-08 Change 3" (Dec. 12, 2008).** It is punitive and unfair to deny workers' access to their livelihood when the workers have done everything asked of them by the federal government and have been approved for a TWIC card, yet card production and activation delays caused by Lockheed Martin and its sub-contractor(s) persist and threaten to keep them off the job. All workers who have been approved should be granted continued unescorted access until their cards are received and activated.

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Again, we thank you for all of your efforts to protect working families from unnecessary financial strain and hardship caused by delays and inefficiencies in the TWIC program. If you have any questions, or would like any additional information, I can be reached at (510) 663-5705.

Very truly yours,



Laura Moskowitz  
Staff Attorney