



Question & Answer

January 29, 2008

USCIS NATIONAL STAKEHOLDER MEETING *Answers to National Stakeholder Questions*

UPDATES

- The next stakeholder meeting will be held on February 26, 2008 at 2:00pm
- Extended Processing Delays (Stats provided at meeting)

1. **Question:** Is there an update on the application receipting “frontlog” (we were told at the last meeting that it would be eliminated by sometime this month)?

Response: As of January 29 the lockbox is receipting I-130 December 14, 2007 filings and all I-130 filings from the service centers have been forwarded to the lockbox. All forms other than the I-130 are current in receipting

2. Many El Salvador TPS applications have been receipted, but the receipt number are now not allowed by the USCIS website nor able to be found by Customer Service. One of our affiliates reported that when she called USCIS, the Customer Service agents transferred her to supervisors who tell her that USCIS is “aware of the situation” and is processing the TPS applications, but here is no proof of this since no one is able to verify the application’s status through the receipt number. What is the situation and when will the receipt numbers be online?

Response: USCIS has receipted all applications types except I-130 scheduled for completion by mid-February. Once an application has been receipted there is a standard lag time of approximately two weeks before information is available on our website using Case Status Online. It is likely that the customer may have made his or her inquiry during this lag time period. USCIS is currently working on a solution to shorten the time it takes information on a case to get on the agency’s website. You may wish to check again to see if this indeed is the case. If the customer has a receipt number he/she can use Case Status Online or call the NCSC to research the status of their case.

3. **Question:** Is there a detailed update on the naturalization backlog?

- a. What is the status of new hires?

Response: Local offices are in the process of receiving list of prospective employees from our human resources office in Burlington, VT. We have instructed our regional and local offices to make their selections as quickly as possible so the security clearance process can begin.

- b. What is the status of the reprogramming request in Congress?



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Response: We hope that the reprogramming request will be submitted to the Committees on Appropriations within the next couple of weeks. Once it is submitted, the normal process is for us to brief the staff and answer their questions.

- c. What is the breakdown of pending N-400s by district offices?

Response: Copies of these statistics will be distributed at the meeting.

4. **Question:** Is there an update on the Asylee adjustment backlog? According to the CIS website, the NE Service Center is currently processing Asylee I-485s filed on or before October 1, 2006 and the TX Service Center is currently processing Asylee I-485s filed on or before August 1, 2004.

- a. Why is there such a big discrepancy in the processing times at the two service centers?

Response: USCIS Website processing times posted on January 15, 2008 reflect Nebraska Service Center as October 1, 2006 and Texas Service Center as June 5, 2007. Texas Service Center has made progress from the August 1, 2004 processing time reported in December 2007 up to the current date of June 5, 2007. Nebraska Service Center is expected to move their date up as progress is made. These dates will continue to be updated on the USCIS website.

- b. What happened to CIS' goal of reducing the Asylee's I-485 processing time to six months by the end of FY 2007? Does CIS still have this goal?

Response: USCIS continues to work to maintain that processing time by identifying cases as they are workable, i.e. security issues have all been resolved.

- c. How is the Asylee adjustment backlog impacted by the new naturalization backlog?

Response: The adjudication of Asylee adjustment cases has not been affected by the naturalization backlog at the Service Centers.

5. **Question:** In many cases, processing timeframes listed for applications/petitions pending at the NSC, TSC, VSC, and CSC are listed in terms of months and days, instead of specific dates. Example: for the NSC I-90A – the processing time is listed as 6 months.

- a. What is the date used to compute the six month processing time? Date of filing of the application or date of receipt issued by the Service Center? The specific date format was preferred because it better/more clearly allowed for applicants/representatives to estimate the amount of time it would take a Service Center to process an application.

Response: All processing information for Service Centers on the USCIS Processing Dates webpage has now been standardized to display specific date format. The processing times shown are for applications that have just been completed.

- b. Will USCIS consider reverting to the specific date processing time format?

Response: Please see response to Question 5 (a).



6. **Question:** On 9/28/06, CIS issued a new policy guidance called “Interim Measures for Testing Naturalization Applicants on English and Civics.” This guidance updates the previous testing guidance issued in December 2000, which we have a copy of. It includes, as an addendum, several different sets of test questions for adjudicators’ use. Will USCIS provide us with a redacted copy of the guidance, without the addendum?

Response: The referenced memorandum concerns processes by which the standard civics tests were created, methods of evaluating the test results, and a discussion of discretionary adjudicative considerations. Because these processes concern internal agency matters, this memorandum has not been offered for general publication.

7. **Question:** On page 41, the CIS “Guide to Naturalization” references a Form I-847 called the “Report of Complaint.” This is a pre-addressed postcard that is sent to CIS headquarters to report customer service complaints from local offices. The Guide states that the form can be ordered from the Forms Line (it is not available on the CIS website). We tried ordering this form on the Forms Line several weeks ago, and never received it. Please let us know if this form is still in use, how we can receive a copy, who receives it at CIS headquarters, and what is the process for responding?

Response: This is a legacy Immigration and Naturalization Service (INS) form that is no longer in use. We intend to remove any references to this document as soon as possible, and appreciate your bringing this to our attention.

8. **Question:** Could USCIS please clarify the issue of signing the N-648 and N-400 forms on behalf of a disabled applicant who is unable to sign or even make a mark? The policy guidance (4/7/99 policy memo no. 47 and 6/30/03 policy memo on oath waivers) is confusing in terms of who can sign (a designed representative vs. a legal guardian) and which parts of the form N-400 should be signed (Parts 11, 12, or 13).

Response: We agree that given the different wording of these instructions, clarification is in order. The matter has been taken under review.

9. **Question:** In November 2007, following a meeting with Director Gonzalez regarding the Religious Worker Visa Program (RWVP). Several community/faith-based organizations sent a letter to Director Gonzalez with four (4) proposed fixes for USCIS regarding religious worker petition/application delays and are summarized again below. What if any steps has USCIS taken toward adopting/implementing such fixes?
- a. Advocates requested that USCIS administratively toll the number of days during which the I-129 petition is pending due to security reviews and site visits. The tolled time should not count toward the 240 day time period set forth in 8 CFR § 274a.12(b)(20).

Response: There is no 240 “grace” period associated with the filing of an initial Form I-129. Thus, when an initial Form I-129 petition is filed with USCIS or a visa is requested at the Department of State, there is no tolling. When an initial Form I-129 is filed, USCIS may, depending on the circumstances, conduct a site visit.



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When a Form I-129 is filed for an extension of stay, USCIS may conduct a site visit. There is no provision in the regulations at 274a.12(b)(20) for tolling when an R-1 nonimmigrant requests an extension of stay. Consequently, if a site visit were conducted when a Form I-129 is filed for extension of stay, the 240 day time limit would not be tolled.

- b. Advocates requested that USCIS allow for the concurrent filing of I-360 and I-485 applications for religious workers.

Response: Legacy INS implemented concurrent filing as an accommodation for business petitioners because INS had large processing backlogs for Form I-140, Immigrant Petition for Alien Worker. These backlogs adversely impacted, among others, aliens wishing to adjust their status in the United States who could not file Form I-485, until the Form I-140 was approved. The concurrent filing rule can be found in the federal register as “67 FR 49561, 7/31/02”. This rationale does not apply to this rule since there is no backlog of religious worker petitions.

- c. Advocates requested that premium processing be reinstated for the R-1 category.

Response: On January 4, 2008, USCIS published a notice on its website pressroom announcing that suspension of premium processing services for religious worker (R-1) visa petitions will be extended until July 8, 2008.

10. **Question:** INA § 212(a)(9)(B)(II) states "Asylees.-No period of time in which an alien has a bona fide application for asylum pending under section 208 shall be taken into account in determining the period of unlawful presence in the United States under clause (i) unless the alien during such period was employed without authorization in the United States." It seems "Asylees" are included. Beneficiaries of I-730 petitions are derivative Asylees. The statute is not clear on this.

Also, INA § 209(c) states: The provisions of paragraphs (4), (5), and (7)(A) of section 212(a) shall not be applicable to any alien seeking adjustment of status under this section, and the Secretary of Homeland Security or the Attorney General may waive any other provision of such section (other than paragraph (2)(C) or subparagraph (A), (B), (C), or (E) of paragraph (3)) with respect to such an alien for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. While it falls under the Asylee adjustment section, the language indicates that any provision of § 212 except those listed, may be waived. Therefore it appears 212(a)(9)(B) may be waived by the AG.

- a. Are derivative Asylees exempt from the 10 year bar?

Response: No. Once derivative asylum status is granted, no unlawful presence accrues. However, the grant of derivative asylum does not eliminate any unlawful presence that the spouse or child accrued in the United States **before** the approval of the application requesting asylum for the derivative. This is true regardless of whether the derivative received asylum as a result of his or her inclusion on the I-589 filed by his or her principal or as a result of being the beneficiary of an approved I-730. As noted in the question, INA § 212(a)(9)(B)(II) further states "Asylees -No period of time in which an alien has a bona fide application for asylum pending under section 208 shall be taken into account in determining the period of unlawful presence in the United States under clause (i) unless the alien during such period was employed without authorization in the United States." USCIS interprets this language to apply to both principal and derivative asylum



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seekers. Therefore, unlawful presence does not accrue during the period that a bona fide I-589 or I-730 seeking asylum for a derivative remains pending, *unless* the derivative alien was employed without authorization in the United States during that same period. As with any alien subject to the § 212(a)(9) ground of inadmissibility, the 3 and 10-year bars for unlawful presence do not apply to an Asylee, including a derivative, unless the person has triggered the bar by making a departure from the United States.

- b. Alternatively, are they eligible for a waiver of the 10 year bar?

Response: Yes, a derivative Asylee who accrues sufficient periods of unlawful presence and who triggers the 3 or 10 year bars by making a departure from the United States will need to apply for a waiver under INA 209(c) in conjunction with the adjustment of status application. That waiver may be granted for humanitarian reasons, to assure family unity, or when it is otherwise in the public interest, provided that the applicant is not inadmissible on any other ground that cannot be waived.

- c. If so, do they need to file a form?

Response: A I-602 is normally the form used by an Asylee to apply for a waiver under INA 209(c); however, under certain circumstances, the waiver may be granted without the need to file Form I-602. When an adjudicator determines that a derivative Asylee requires a waiver of inadmissibility prior to adjustment of status, the adjudicator may grant the waiver without requiring submission of the Form I-602 if: the applicant is inadmissible under 212(a)(6)(A)(i) or 212(a)(9)(B); CIS records and other information in the alien file contain sufficient information to assess fully the eligibility for a waiver; there is no evidence in CIS records to suggest that other adverse factors would affect the discretionary determination; and it is appropriate to grant a waiver as described above.

- d. If so, is it an I-601 or I-602?

Response: See above. If evidence does not support a discretionary approval of a waiver, the officer may request that the applicant provide additional information in support of a waiver of inadmissibility. At the time of this request, Form I-602 can be requested if it is not present in the record.

11. **Question:** When there has been a previous asylum application filed with USCIS, a second filing at the Vermont Service Center results in nothing. The application is not rejected. No receipt is issued. If it is forwarded, no transfer notice is sent. No interview is scheduled. No action seems to be taken, ever. As an attorney who regularly attends liaison meetings with the directors of the NJ/NJ Asylum Offices, I understand that the I-589s in this situation should be filed directly with the Asylum Office, with an explanation. However, many attorneys, and likely more individuals/stakeholders are unaware of this. There are no special instructions for subsequent filings on the I-589 instructions. Would VSC please send some correspondence to the applicant

Response: The Affirmative Asylum Procedures Manual, which can be found on the USCIS website at <http://www.uscis.gov/files/nativedocuments/AffirmAsyManFNL.pdf>, indicates in Section II.B.2 that subsequent filings of the I-589, Application for Asylum and for Withholding of Removal, should be filed



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directly with the Asylum Office having jurisdiction over the application. Asylum offices accept these applications directly because Service Centers are unable to overwrite system data from previous entries for these cases. Any subsequent application sent to a Service Center is forwarded to the appropriate Asylum Office for processing.

The Asylum Division agrees that the guidance pertaining to subsequent filings of I-589s should be clarified. The Asylum Division plans to emphasize this issue in updates to the USCIS website, and also perhaps in the context of Frequently Asked Questions (FAQs). The Asylum Division also plans to modify the instructions to the I-589 to clarify this point. In addition, the Asylum Division and Service Center Operations are working to develop a process to notify applicants that their application has been forwarded to the appropriate asylum office.

Individuals who have filed a subsequent application will receive an appointment notice to appear at an ASC for biometric capture as well as an interview notice with a date and time to appear at the Asylum Office. Any concerns regarding whether a subsequently filed I-589 was received may be referred to the Asylum Office having jurisdiction over the case.

12. **Question:** How will Burmese adjustment applicants that have been denied adjustment based on membership in the KNU or other group now specifically designated to not be a terrorist organization be adjudicated, now that the new law has been enacted?

Response: All pending adjustment applications where a final decision has not been entered are now subject to the provisions of the new law. Motions to reopen or reconsider based on the new law may be entertained by the Service Centers on cases that were denied prior to passage of the law if the basis for the original denial may be affected by the provisions regarding the groups mentioned in Section 691 of the Omnibus Appropriations Act.

13. **Question:** What is the timeframe for adjudication of Hmong and Montagnard waivers?

Response: There is no specific timeframe for adjudication of Hmong and Montagnard waivers. Service Center adjudicators may now adjudicate Hmong and Montagnard adjustments according to the relief provisions in Section 691 of the Omnibus Appropriations Act, under which appropriate groups affiliated with the Hmong and the Montagnards are not to be considered terrorist organizations. USCIS is consulting with other DHS components and DHS HQ to develop policy guidance for the interpretation of this provision.

14. **Question:** Is there an update regarding material support waivers and implementation of the material support provision that was included in the omnibus appropriations legislation signed in December?

Response: USCIS is still in the process of reviewing the legislation with DHS and developing implementation instructions for adjudicators. The provisions of the Omnibus Act stating that those groups for which DHS had already issued group-based material support exemptions are not to be considered terrorist organizations under the INA are being applied by adjudicators. Adjudicators also continue to consider whether a duress-based exemption is appropriate for those individuals who had provided material support under duress to a Tier III terrorist organization, the FARC, or the ELN. On December 18th, DHS authorized USCIS to consider the Tier I/Tier II duress exemption for those individuals who provided material support under duress to the National Liberation Army of Colombia



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(ELN). The Omnibus Act provides the Secretary of DHS with a broader discretionary authority not to apply certain terrorist-related inadmissibility provisions to certain aliens, and USCIS and DHS are examining the appropriate possible uses for this authority.