



April 10, 2012

# Questions & Answers

## USCIS Quarterly National Stakeholder Engagement

### Service Center Operations Directorate

#### Question: Form I-601

The AAO has repeatedly held that the Form I-601 waiver appeal is part of the adjustment of status process.<sup>[1]</sup> As part of the adjustment of status, the application for adjustment of status is not final until the appellate process is complete. While this should qualify a beneficiary of a pending appeal for an EAD based on the Form I-485, USCIS consistently denies Forms I-765 on the basis that the related Form I-485 has been denied.<sup>[2]</sup>

- a) Please advise what steps USCIS is taking to train Service Centers that a Form I-485 applicant is eligible for a continued EAD (approval of Form I-765) if his/her Form I-601 is on appeal at the AAO?

**Answer:** The USCIS position is that an appeal to the AAO from the denial of a Form I-601 does *not* mean that the underlying Form I-485 is still “pending” for purposes of eligibility for an EAD. If the appeal results in approval of the I-601, USCIS will generally, as a matter of discretion, reopen the Form I-485 on its own motion. But the fact that an I-601 appeal is pending does not make the applicant eligible for an EAD under 8 CFR 274a.12(c)(9). The applicant would have a “pending” Form I-485 for purposes of an EAD if the applicant renews the denied Form I-485 before an immigration judge, in accordance with 8 CFR 1245.2(a)(1).

- b) Will/does USCIS communicate with the AAO to confirm the status of a pending Form I-290B if the applicant (attorney for) provides documentation that his/her Form I-601 is on appeal with the AAO?

**Answer:** No, when an AAO appeal is accepted, the local office transfers the file to the AAO. If an individual is concerned about whether or not his appeal has been received, he may make an INFOPASS appointment or contact the National Customer Service Center at 1-800-375-5283. Average processing times for AAO cases are posted on the USCIS website, [www.uscis.gov](http://www.uscis.gov).

<sup>1</sup> See *In re Applicant*, 2009 WL 1742109 (Office of Administrative Appeals, Los Angeles, CA), March 3, 2009; *In re Applicant*, 2009 WL 1449878 (Office of Administrative Appeals, Los Angeles, CA), Feb. 17, 2009; *In re Applicant*, 2009 WL 1450599 (Office of Administrative Appeals, California Service Center), Jan. 6, 2009; *In re Applicant*, 2007 WL 5746513 (Office of Administrative Appeals, St. Paul, MN), Dec. 6, 2007.

## Field Operations Directorate

### **Question: INA 319(b) Natz cases and police clearance letters**

When an applicant's fingerprints are rejected by FBI, and a police clearance (or clearances) is required, applicants who are required to appear for an interview are not informed about the need to provide the police clearance(s) until he/she appears for the interview. (According to the stakeholder, this is common for INA 319(b) naturalization cases, which is problematic for applicants, who in nearly all cases have traveled from abroad to attend the interview, and who anticipates that he/she will take the citizenship oath expeditiously following the interview. In most of these cases, the applicant is unable to remain in the U.S. long enough to provide the police clearance(s), and must make another trip to the U.S. later to take the citizenship oath.) A change in procedure is needed so that these applicants receive a notification of the need for police clearance(s) in advance of scheduling the interview.

**Answer:** USCIS treats 319(b) naturalization cases as high priority, and the field offices work diligently to establish and maintain contact with these applicants to ascertain their travel plans and office of preference for the interview. USCIS is also willing to make special accommodations for 319(b) applicants, such as enabling them to take the Oath of Allegiance and become a citizen on the same day as their naturalization interview. With that said, at times there are unforeseen circumstances, such as miscommunications, changes with the applicant's travel plans, or other situations that prevent USCIS from being able to naturalize the applicant on the same day of the interview. One such situation is when USCIS does not realize until the day of the interview that the applicant had two fingerprint rejects, and must obtain police clearance letters before USCIS can make a decision on the case.

Although special accommodations are applied, there are certain challenges that accompany this process, particularly with maintaining communication between USCIS and INA 319(b) applicants. Sometimes applicants are residing abroad in different time zones and may not have a reliable contact number or email address. Other times applicants do not know, and USCIS is not notified until the last minute, about when the applicants plan to fly to the U.S., and which field office they want to be interviewed at when they arrive. As a result, USCIS must work quickly to get the A-file transferred to the correct field office. This leaves very little time for the field office to receive and review the file prior to the interview.

Due to this and other system limitations, typically the first time the Field Office discovers that the fingerprints were rejected twice and a police clearance letter is needed is shortly before the interview. Depending on the office workload and other factors, it may not be practical or possible for the officer to review the file prior to the actual interview. However, it may be possible if the applicant notifies USCIS of his or her travel plans and desired interview location at least a few weeks prior to arrival.