



December 7, 2011

Questions & Answers

USCIS Quarterly National Stakeholder Engagement

Office of Intake and Document Production

Question: Fee Waiver Statistics

Please provide a month-by-month breakdown of fee waiver applications, approvals, and denials for each type of application, for June – October 2011.

Answer: The month-by-month breakdown of fee waiver applications, approvals, and denials for each type of application, for June – October 2011 is attached.

Office of Citizenship

Question: Pass-fail rates on the revised citizenship test

Please provide an update on USCIS' records study to determine pass-fail rates on the revised citizenship test and look at its impact on different demographic groups, as compared to the previous version of the test. Please share detailed results or findings from the study, beyond the overall pass rate which is posted on the USCIS website.

Answer: USCIS contracted with ICF International to perform a record study to determine the pass rate for the redesigned naturalization test. Also, analyzed was the pass rate data from a previous records study (from fiscal years 2003 and 2004). This report captured, analyzed and compared applicant performance by demographic characteristics in three categories: gender, age and region of nationality. The studies show that applicant performance on the new test improved compared to the old test. Based on the results of the fiscal year 2010 records study, applicant performance is generally consistent with the pass rate reflected in USCIS's ongoing analysis of internal case management data. A copy of the report can be found [here](#).

Office of Policy & Strategy

Question: January 1990 INS policy memo

A January 1990 INS policy memo states that an alien qualifies as an alien son or daughter only if his or her parent qualifies as an alien spouse as defined in 216(g). An alien spouse, in turn, is defined as an alien who obtains his or her status based on a marriage that is less than two years old when the status is granted. Stakeholders are seeing cases where a stepchild is immigrating but the stepchild's parent is not,

but the child is nevertheless granted conditional resident status. This is in conflict with the 1990 memo that limits the conditional resident child classification to situations in which there is a parent who qualifies as an alien spouse. Please clarify if USCIS is still following the 1990 policy guidance.

Answer: Yes, USCIS is still following the 1990 policy guidance. Per Legal Opinion, Cook, General Counsel (Jan. 12, 1990), an alien qualifies as an “alien son or daughter” only if his or her alien parent qualifies as an “alien spouse,” as defined in INA Section 216(g)(1). In other words, if the alien parent did not obtain permanent residence through marriage, the child is not subject to the conditions in INA Section 216. If the alien parent of a child has never obtained permanent residence, the child should be granted resident status without conditions. (The January 1990 policy memo is attached.)

Question: Commonwealth of the Northern Mariana Islands (CNMI) and NAFTA

Congress approved legislation to extend U.S. immigration laws to the Commonwealth of the Northern Mariana Islands (CNMI). Following the expiration of their transition immigration status (e.g. CW-1 or E-2 CNMI), Canadian and/or Mexican citizens working in the CNMI must change to a visa classification under U.S. immigration law. The natural course for most Canadian or Mexican citizens in this situation would be a TN or E-2 under NAFTA.

However, NAFTA only applies to the customs territory of the United States, which includes the 50 states, the District of Columbia and Puerto Rico. NAFTA Annex. 201.1. Additionally, according to NAFTA Implementation Cable 010, NAFTA does not apply to the CNMI. Now that U.S. immigration law has been extended to the CNMI, does the policy precluding applicability of NAFTA to the CNMI have or will change thereby allowing Canadian and Mexican citizens to file for TN or E-2 status under NAFTA in the CNMI.

Answer: The Consolidated Natural Resources Act of 2008, which generally extended U.S. immigration law to the Commonwealth of the Northern Mariana Islands (the CNMI) did not change the limitation of NAFTA to the customs territory of the United States, or place the CNMI within U.S. customs territory for NAFTA or any other purpose. In this regard, the CNRA merely moved the CNMI from the group of territories outside both the INA and U.S. customs territory (formerly the CNMI and American Samoa, now only the latter), to the group of territories outside U.S. customs territory but covered by the INA (Guam, the U.S. Virgin Islands (USVI), and now the CNMI). We neither have made, nor do we anticipate, any policy change that would treat the CNMI differently from Guam and the USVI with respect to availability of NAFTA-based nonimmigrant status.

Service Center Operations Directorate

Question: Processing times for asylee I-485s

The NSC lists the processing time at 4 months, but the TSC lists it as 8 months. Why there is such a discrepancy and which time is the most accurate? Wasn't the TSC supposed to help take pressure off the NSC for the asylee I-485s, if so, why are they taking twice as long. Is the delay related to material support/security check delayed cases? Is there another reason? Maybe a combination of several reasons?

Answer: A review of the USCIS government web site available to the public indicates that as of November 14, 2011, the Texas Service Center was processing I-485 asylum cases that had been received as recently as May 26, 2011. This would indicate a processing time of approximately 5 ½ months. Texas has a slightly longer processing time than the Nebraska Service Center primarily because of an

unanticipated surge in I-485 asylum applications received by the Texas Service Center. The total number of receipted I-485 asylum applications this past fiscal year in Texas was 20 per cent over the projections. The Texas Service Center has responded to this increased caseload by allocating more resources to the adjudication of that form, and is reporting progress in reducing the backlog to under the 5 ½ month processing time reported on November 14, 2011.

Enterprise Services Directorate

Question: Application Support Center (ASC) fee waiver policies

Is there a blanket exemption for biometrics fees for individuals aged 79 and older? Some forms indicate that there is no fee requirement for this group, but others do not. This question arose when an 85 year old woman filed an I-90 for a replacement green card. The I-90 form does not mention an exemption, and her local ASC told her that the applicant does need to pay the fee. But, this seems odd, because the I-485 Application for Adjustment specifically does exempt those aged 79 and older from the biometrics fee. It seems inconsistent that the application for a green card does not require a fee, but a fee would be required for getting a subsequent card.

Answer: There is no general exemption from fingerprint background checks based on age. The required background checks vary depending on the benefit and the respective form's instructions will indicate whether biometrics is required. In addition, USCIS may collect biometrics and the required fee from any applicant for any immigration benefit at its discretion. Form I-485 provides that applicants over the age of 79 are not required to submit biometrics or pay the biometrics services fee. Form I-90 and the regulations for obtaining a replacement a Permanent Resident Card do not exempt any applicant from the biometrics services fee on account of their age.

Office of Transformation Coordination

During this engagement, the USCIS Office of Transformation Coordination provided an overview of the new online system, USCIS Electronic Immigration System (USCIS ELIS), which is launching in Fiscal Year 2012. This included a review of the foundational functions and capabilities of the system, a presentation on account creation, and, information for individuals interested in using the new system to electronically file a stand-alone Application to Extend/Change Nonimmigrant Status (Form I-539) to extend, change or reinstate the following nonimmigrant visa classifications:

B classification: Temporary Visitor for Business or Pleasure

F classification: Academic Student

J classification: Exchange Visitor

M classification: Vocational or Other Nonacademic Student

For more information please visit: www.uscis.gov/uscis-elis

Question: USCIS Electronic Immigration System (USCIS ELIS) Accounts

Is there any way for USCIS to screen people who establish accounts in USCIS ELIS? Will USCIS be able to verify that the person is an attorney or accredited representative?

Answer: The process will remain the same. In the first release, we will not be able to electronically verify the identity of representatives who establish accounts in USCIS ELIS. USCIS, however, currently has processes in place to identify fraud in the immigration process and refer cases for further investigations by USCIS, state law enforcement, and/or federal prosecutors. We will continue to conduct outreach on the Unauthorized Practice of Immigration Law, with an emphasis on how to protect oneself in the electronic filing environment. USCIS ELIS will be able to detect patterns of fraud and USCIS will follow up on suspected fraud cases.

Question: USCIS ELIS Organizational accounts

a) Can attorneys and accredited representatives manage more than one client through the new online account?

Answer: USCIS ELIS will allow attorneys and accredited representatives to submit multiple benefit requests for multiple clients. When logging into their accounts, the system also will allow attorneys and accredited representatives to sort multiple benefit requests based on level of completion, client name, action required, benefit type and other criteria. Representatives will be able to view appointments and requests for evidence (RFEs) for multiple clients. In the initial release of the system, attorneys and accredited representatives will be able to use their accounts to submit certain stand-alone I-539 Applications to Extend/Change Nonimmigrant Status only.

b) Once organizational accounts are in place, how will firms handle situations where an attorney leaves the firm but is still listed as having access to the account?

Answer: The organization functionality is envisioned to permit the removal of an attorney who is no longer with their organization from accessing the account. Additionally, attorneys are envisioned to be able to electronically sever their relationship from a client or organization.

c) If the attorney and applicant both have accounts, who submits the Form I-539? Who can view or change the application after it has been filed?

Answer; For the first release, the attorney/accredited representative (representative) will draft and e-sign the benefit request, the applicant will physically sign the application, the representative will scan the signed copy and upload it into USCIS ELIS, and then the representative will complete the submission process by providing payment. The representative is the only one who has the ability to change a benefit request, so applicants should coordinate closely with their representative to ensure that the information on the benefit request is accurate. Once submitted, either party may view the benefit request and respond to requests for evidence.

Question: USCIS ELIS and Designated School Officials (DSOs)

a) Will a university be able to establish an organizational account? DSOs help students with applications all the time, especially I-539 reinstatements.

Answer: Organizational accounts will only be available to legal representatives. DSOs do not have legal authority to access students' information.

b) DSO's need at least view access at least for any applicant changing of status or reinstatement to F1. In order for the DSO to register the SEVIS record upon approval, or defer the I-20 date into the future while pending past the program start date on a change of status. Without this process, the SEVIS record will

automatically cancel or terminate causing the student or applicant problems. Please consider giving the DSO access in this regard earlier than what is currently scheduled.

Answer: Thank you for your input. At this time, we cannot add this functionality earlier than currently scheduled.

Question: Database integration and USCIS ELIS

- What steps are being taken to ensure that crucial feeds from one database to another within the DHS immigration system are monitored at both ends to ensure that feeds happen daily and that the feeds go through to the receiving databases completely and securely?
- Will monitoring these feeds be a part of the job description of specific information technology personnel, and will their performance on this crucial task be monitored and included in performance reviews?
- What mechanism exists, or will be created, for IT personnel to report problems with intra-database feeds, and whose responsibility will it be to resolve such problems?
- What training will be provided to general (non-IT) CIS staff regarding the data feed mechanism?
- Will contractors be involved at any step in the data transfer process, and if so, what training will be provided to them on the necessity of monitoring data feeds and who to notify if feeds fail?
- What efforts will be made to apply any insights gained during transformation regarding data feeds, to other aspects of the DHS/CIS infrastructure that are dependent on feeds from one database to another or to the SAVE System? Who currently monitors those older, existing feeds, for instance, from TECS to SAVE or from CIS to SAVE? How often are they monitored, and what are those who monitor the feeds instructed to do if a feed fails?

Answer: USCIS will follow existing laws, policies, standard operating procedures, and interagency agreements for monitoring USCIS ELIS and other agency systems. USCIS also has protocols in place that govern user access, interagency data exchanges, and security protocols to protect system information from unauthorized exposure.

Question: Future release dates

Will releases A1, A2 and A3 occur in six month increments?

Answer: We are committed to releasing new functionality and/or form types in USCIS ELIS as soon as they are available and fully tested.

Question: Biometrics and USCIS ELIS

a) Will biometrics be captured in USCIS ELIS or will students still need to travel to an Application Support Center (ASC) for their fingerprints?

Answer: The first release of USCIS ELIS only contains the Form I-539. Biometrics are not required for Form I-539, so biometrics will not be captured or stored in USCIS ELIS at this time. In the future, as more benefit types that require biometrics are added to USCIS ELIS, we anticipate that biometric information will be stored in USCIS ELIS, so customers will make the trip to an Application Support Center (ASC) one time and we anticipate that they won't need to repeat the biometrics for future applications, unless required by law.

b) Once fingerprints are done once, will they have to be done again for the next benefit request? Will there be a fee?

Answer: In the future, we anticipate that biometrics will be stored in USCIS ELIS, so they won't have to be repeated, unless required by law.

Question: USCIS ELIS test site

If a test site doesn't exist already, can USCIS create one? The three minute [video](#) is helpful, but does not show what will happen in the process if something goes wrong (e.g. a field is left blank, required documentation is not submitted).

Answer: USCIS does not have a test site for release A1, but we appreciate your suggestion. We would like to provide our stakeholders an opportunity to participate in testing for future releases. We will look into creating a test site.

Question: USCIS ELIS functionality

a) Will both the representative and the applicant receive email notification of updates to their application status? Will USCIS contact an applicant without going through the attorney first?

Answer: The attorney and applicant can both opt to receive email notifications about any updates to, or USCIS action on, pending benefit requests.

b) Other e-filing systems sometimes contain glitches that result in inaccurate information being stored or uploaded documents being lost in the system. How will USCIS avoid this and ensure applicants have a paper copy of any correspondence from USCIS?

Answer: Any correspondence that serves as proof of an immigration benefit will always be sent to the applicant via postal mail. For documents in USCIS ELIS, the applicant will be able to print at various points in the application process.

c) Will USCIS ELIS communicate with SEVIS?

Answer: Yes, the first release will interface with SEVIS.

d) Very few people have scanners at home – will USCIS accept pictures that are taken with a cell phone and uploaded?

Answer: We will accept documents that have a resolution of at least 300 dpi (dots per inch). Those intending to use devices other than traditional scanners should check the technical specifications of those devices to ensure that they meet the 300 dpi minimum requirement.

Question: USCIS ELIS and FOIA

Once the new system is in place, will it be easier for an applicant to get a copy of his or her file than the current FOIA process?

Answer: USCIS ELIS will provide immediate self-service access to information that the applicant has filed. The applicant and attorney or accredited representative will have access to any notices issued by USCIS to the applicant in connection with the benefit request (i.e. Requests for Evidence; Notices of Intent to Deny, and final decisions) and significant case updates. The FOIA request process will remain paper-based and unchanged.

Question: USCIS ELIS and form I-539

a) How many I-539s are submitted by students?

Answer: The chart below contains the number of F-1 and M-1 students and J-1 exchange visitors who have filed the I-539 in the past two years.

	Extend Status		Change Status			Reinstate Status	
	F-1	M-1	F-1	M-1	J-1	F-1	M-1
2011	102	1,835	16,460	456	716	3,212	85
2010	102	1,708	18,050	474	762	3,972	63

b) Page one of Form I-539 asks if an applicant has ever been in J-1 status, and, if so, requires proof of that status (DS-2019 or passport). If the student loses his or her documents and the DSO doesn't have a copy, what other documentation will USCIS accept?

Answer: The following are examples of documents that applicants could submit to USCIS to demonstrate a previous J-1 status.

- Fee Remittance for Certain F, J, and M Nonimmigrants (Form I-901)
- A valid annotated Arrival-Departure Report (Form I-94)
- Notice of Action (Form I-797)
- Certificate of Eligibility for Exchange Visitor Status (Form IAP-66)
- Application for Waiver of the Foreign Residence Requirement (Form I-612)
- Evidence from his or her J-1 program sponsor confirming his or her participation in the program and indicating that his or her documents were lost
- Financial evidence of J-1 employment

c) Does USCIS ELIS allow for "D/S" (Duration of Status) in the current Part 1 "Expires on (mm/dd/yyyy)" and Part 3 question 1?

Answer: In A1, no - they will just leave the expiration date blank. In future release, USCIS will be adding a D/S checkbox.

c) For F-1 reinstatements and change of status, USCIS requires the original Forms I-20 and I-94. Will that change?

Answer: USCIS will continue to require these documents. However, in USCIS ELIS, users will be required to scan the original forms and upload the electronic documents into the system.

d) DOS regulations state that the DS-2019 cannot be scanned. Is USCIS planning to ask DOS to change their regulations or to make an exception for USCIS ELIS?

Answer: DOS regulations do not bar applicants for immigration benefits from submitting scanned copies of their completed DS-2019s to USCIS. Thus, no change is required. In addition, USCIS has amended the regulations at 8 CFR 103.2(b)(4) to allow for submission of originals or copies of documents, like the DS-2019, in accordance with USCIS form instructions. For purposes of benefit requests submitted electronically in USCIS ELIS, applicants are permitted to submit a scan and upload to USCIS ELIS as supporting evidence, a completed and endorsed DS-2019 issued by the designated school official for the schools the applicants currently attend or will transfer to upon approval of a request for transfer (extension).

e) Can M-1 vocational students apply for a transfer in USCIS ELIS? Will there be a data field in USCIS ELIS to indicate that an M-1 student is a transfer?

Answer: Yes, an M-1 student, if otherwise eligible, may apply to transfer to another school using USCIS ELIS. An M-1 student applying for a transfer by e-filing an I-539 in USCIS ELIS should select “An extension of stay in my current status” as the basis for the benefit request when filing out the electronic application. The student must establish that he or she meets all requirements set forth in § 214.2(m)(11)(i) and provide an explanation as to why he or she is unable to remain at the school to which he or she was initially admitted due to circumstances beyond the student’s control. The M-1 student may enter his or her explanation in the narrative box provided on the page when the student selects “extension of status.” This box has a 500-character limit; if the student needs additional space to explain their inability to remain at the school, the M-1 student may upload document(s) that provide additional explanation.

The student must also upload an electronic copy of the Form I-20, Certificate of Eligibility for Nonimmigrant M-1 Student Status, completed by the student and designated official for the transfer school as described in § 214.2(m)(11)(ii)(B), and the Form I-94, Arrival-Departure documents for the student’s spouse and children (if applicable).

An M-1 student may only complete the transfer after USCIS approves the application. The date of approval of the transfer is considered the program start date listed on the Form I-20, and the student will be granted an extension of stay for the period of time necessary to complete the new course of study plus 30 days, or for a total period of one year, whichever is less.