



Questions and Answers

USCIS Service Center Operations Directorate – American Immigration Lawyers Association (AILA) Liaison Meeting

July 27, 2011

Overview

On July 27, 2011, the USCIS Service Center Operations Directorate hosted an engagement with AILA representatives. USCIS discussed issues related to operations and adjudications. The information below provides a review of the questions solicited by AILA and the responses provided by USCIS.

Questions & Answers

Question 1: Guidance regarding USCIS policies and the National Security Entry-Exit Registration System (NSEERS)

During the last two calls, Service Center Operations Directorate has indicated that USCIS was in the process of reviewing its policies respecting NSEERS. Is there any update on this process or any additional guidance as to whether USCIS will continue to deem aliens inadmissible for failure to register, or will prior noncompliance no longer be an issue?

USCIS Response: At this time, there has been no change to USCIS policies in regards to NSEERS and prior violations.

Question 2: Adam Walsh Act cases and processing delays

AILA members report lengthy adjudication delays (many times exceeding 1 year) for Adam Walsh Act cases. Could USCIS explain the reason for these delays and advise how long is an appropriate wait before contacting National Customer Service Center (NCSC) after Requests for Evidence (RFEs) and Notices of Intent to Deny (NOIDs) on these cases have been responded to. Also, where should members go, other than the NCSC, when they believe that delay on a particular case is excessive?

USCIS Response: Pursuant to a USCIS policy memorandum dated April 22, 2011 and titled:

Supplemental Guidance to USCIS Service Centers on Adam Walsh Act Adjudication - Centralization of Identified Adam Walsh Act Related Petitions at the Vermont Service Center for Adjudication and Review (AFM Update AD11-23), the Service Center Operations Directorate designated the Vermont Service Center (VSC) as the central location where all Adam Walsh Act related petitions filed with our service centers would be adjudicated until further notice. Once a preliminary determination is made that the petition warrants review as an AWA related case, the case is relocated to the VSC. The essential purpose of this centralization process is to ensure consistency in adjudication of these sensitive and complex cases. To achieve this goal, the VSC has assigned a cadre of highly trained Immigration Services Officers (ISOs) to adjudicate the AWA cases to and their decisions are subject to the highest levels of supervisory review at the VSC.

Upon review, ISOs at the VSC may issue Requests for Evidence (RFEs) and Notices of Intent to Deny (NOIDs) concerning the possible AWA related offenses. Petitioners are then afforded time to respond to the RFEs and NOIDs. On receipt of those responses, the ISOs must review the evidence presented to make well-reasoned determinations about the risks petitioners may pose to the beneficiaries of the petitions. Additionally, some petitioners seek the reopening and reconsideration of denied AWA related petitions; this type of review also adds to the time required to adjudicate these cases. As it stand currently, the processing time for AWA-related cases at the VSC is at eight months.

Since the extent of responses to RFEs or NOIDs varies from case to case, the Service Center Operations Directorate cannot establish a timeframe within which a petitioner may appropriately contact the National Customer Service Center (NCSC) to inquire about the status of a centralized AWA related petition. Instead, while we welcome petitioners and their authorized representatives to contact us via the NCSC, we would encourage petitioners and their representative to exercise their own judgment as to what constitutes a reasonable time to make such an inquiry (after a response to RFE or NOID has been sent) while taking into account the volume and type of the information that they have submitted with their response.

Question 3: Service center processing times for consular returns, in particular H-1B returns

Members at the AILA Annual Conference reported that H-1B returns are taking in excess of 10 months. Could the Service Center Operations Directorate please advise on the standard/reasonable time for service center review of consular returns? Could members simply re-file the case? If the answer is “yes,” what is the appropriate action with respect to the case returned by the consulate?

USCIS Response: There are a number of factors that affect processing of consular returns, some of which are outside of USCIS’s control as the case must be returned to USCIS from Department of State. The service centers try to process consular returns in six months. As of July 20, the California Service Center reported that it is working H-1B consular returns from January 2011. The Vermont Service Center reported that it has been focusing on H-1B consular returns in the last few months, and is currently working H-1B consular returns from October and November 2010. If a new H-1B petition is filed, the service center will hold the new petition in abeyance pending resolution of the consular return.

Question 4: USCIS use of *Validation Instrument for Business Enterprises (VIBE)* to verify non-profit entities and religious organizations in regards to R-1 and I-360 worker petitions

- a. The Web-based *Validation Instrument for Business Enterprises (VIBE)* is a tool designed to enhance USCIS's adjudications of certain employment-based immigration petitions. VIBE uses commercially available data from an independent information provider (IIP) to validate basic information about companies or organizations petitioning to employ alien workers. Currently, the independent information provider for the VIBE program is Dun and Bradstreet (D&B).¹

According to the VIBE page on the USCIS website, R-1 and I-360 religious worker petitions are subject to VIBE. Thus, we conclude that USCIS uses VIBE to verify non-profit entities and religious organizations. AILA is concerned that many non-profit entities and religious organizations are not reported in the D & B database accessed by VIBE. Is USCIS aware of the extent to which non-profit entities and religious organizations are reported by D & B and appear in VIBE? If there is limited reporting of non-profit entities and religious organizations in the VIBE system, are examiners alerted accordingly, and instructed to closely review record material and other sources of information before issuing an RFE?

USCIS Response: VIBE is an additional tool for Immigration Services Officers (ISOs) to use in the overall adjudicative process. USCIS will issue an RFE or a Notice of Intent to Deny (NOID) if there is derogatory or contradictory information found in VIBE that is material to the benefit requested *and* not outweighed by evidence submitted with the petition. ISOs have been instructed to closely review the evidence submitted in the record.

Separate from USCIS's utilization of VIBE, the regulations require that a petitioner requesting any religious worker classification must provide a determination letter from the Internal Revenue Service (IRS) of the tax-exempt status of the religious organization under Internal Revenue Code (IRC) 501(c)(3), 26 U.S.C. 501(c)(3) (see 8 CFR 204.5(m) and 214.2(r)(9), respectively). In cases where there is contradictory evidence identified in VIBE regarding a petitioner's non-profit status, the issue is generally overcome if the petitioner is in compliance with this evidentiary requirement.

Question 5: Clarification of USCIS's policy regarding evaluations on the equivalency of degrees

AILA members request that Service Center Operations Director advise on how the Service treats foreign degrees, for equivalency purposes, if the programs were structured differently at the time the degree was obtained than what is reflected today in the ACCRO-EDGE database. For example a degree that may have taken 4 years in the past now takes 3 years and the individual who holds the degree completed it under the 4 year standard. How can we be sure the beneficiary is given credit for having a 4 year degree? A member at the Annual Conference reported a

¹ See www.USCIS.gov at:

denied I-140 under these conditions even when the member provided a course by course evaluation, a letter from the foreign university explaining the change and documents from the government showing when the change occurred.

USCIS Response: USCIS reviews each educational evaluation independently. If USCIS determines that the beneficiary's educational background is equivalent to a U.S. bachelor's degree then USCIS will adjudicate accordingly. Petitioners should provide whatever information they feel will best establish that the beneficiary's educational background is equivalent to a U.S. bachelor's degree.

As a reminder, USCIS's policy regarding evaluations on the equivalency of degrees is that the evaluations are advisory in nature and the final determination continues to rest with USCIS (*See Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988), *Matter of Sea, Inc.* 19 I&N Dec. 817 (Comm 1988), and *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).).

Question 6: What is the typical timeframe for the transfer of an L petition from U.S. Customs and Border Protection (CBP) to USCIS for Canadians who file L petitions at the border with CBP?

AILA members report that Canadians who file L petitions at the border with CBP, irrespective of which port of entry they use, do not timely (and or never) receive the Form I-797 approval notice from USCIS. AILA has previously (6/29/2011) provided a specific example of this type of problem. Without the I-797, not only are there problems when the L-1 attempts to re-enter the U.S., there is also significant difficulty with Social Security number issuance and Driver's License issuance because state agencies cannot confirm the person's status through SAVE. When attorneys try to track down the missing or delayed I-797, CBP advises them to ask USCIS; USCIS instructs them to ask CBP.

Therefore, AILA would like the Service Center Operations Directorate to provide the typical timeframe for the transfer of an L petition from CBP to USCIS and indicate the specific contact point within USCIS – other than the NCSC -- if the Form I-797 is not issued within a reasonable period of time (i.e. 30 days after the initial L-1 admission). We also ask USCIS to consider creating – in conjunction with CBP – a control number or other identifier that would allow tracking of the L petition from the CBP POE to the USCIS Service Center.

USCIS Response: The service centers have been unable to issue the I-797 approval notices for NAFTA L petitions adjudicated by CBP and forwarded to the centers from POE. This is because those petitions are forwarded to the centers without documentation of whether the petitioner is subject to the PL.111-230 fees and if the petitioner is subject, sufficient evidence of the required fee collection by CBP. The service centers are holding these CBP approved L cases with insufficient evidence of required fee collection which were forwarded from POE before May 5, 2011 pending guidance from DHS. However, all L petitions with lack of required fee collection by CBP received by the centers from POE on or after May 5, 2011 are being rejected back to the POE that forwarded the petition for clarification.

Question 7: Could USCIS please provide the following statistics respecting EB-1 adjudications YTD for Fiscal 2011 and for FY 2010 broken down by Service Center?

- a. Total # of EB-11 petitions received
- b. Total # of EB-12 petitions received
- c. Total # of EB-13 petitions received
- d. Total # of EB-11 RFEs issued
- e. Total # of EB-12 RFEs issued
- f. Total # of EB-13 RFEs issued
- g. Total # of EB-11 NOIDs issued
- h. Total # of EB-12 NOIDs issued
- i. Total # of EB-13 NOIDs issued
- j. Total # of EB-11 Approvals
- k. Total # of EB-12 Approvals
- l. Total # of EB-13 Approvals
- m. Total # of EB-11 Denials
- n. Total # of EB-12 Denials
- o. Total # of EB-13 Denials

USCIS Response: Please see Appendix A

Appendix A

Report created on July 20, 2011

Office of Performance and Quality (OPQ), Data Analysis and Reporting Branch (DARB) NP

Immigrant Petition for Alien Worker (I-140) with Classification of E-11 ¹ , E-12 ² , E-13 ³ Receipts, Approvals, Denials and Request for Evidence for Fiscal Years 2010 - 2011 Year-to-Date						
Service Center	Fiscal Year	Classification	Receipts	Approvals	Denials	RFE Issued
California	2010		0	0	3	0
		E-11	0	0	1	0
		E-12	0	0	0	0
		E-13	0	0	2	0
	2011		2	0	0	0
		E-11	1	0	0	0
		E-12	0	0	0	0
		E-13	1	0	0	0
	Total		2	0	3	0
Nebraska	2010		4,466	5,041	1,640	3,003
		E-11	1,008	846	818	992
		E-12	1,015	1,208	232	541
		E-13	2,443	2,987	590	1470
	2011		3,811	2,564	624	1,473
		E-11	840	408	338	416
		E-12	715	594	90	226
		E-13	2,256	1,562	196	831
	Total		8,277	7,605	2,264	4,476
Texas	2010		12,428	8,703	2,246	3,349
		E-11	4,406	2,426	1,323	1,791
		E-12	2,492	2,014	91	438
		E-13	5,530	4,263	832	1,120
	2011		9,981	6,148	1,374	2,928
		E-11	3,237	1,703	938	1411
		E-12	1,856	1,637	100	458
		E-13	4,888	2,808	336	1059
	Total		22,409	14,851	3,620	6,277
Vermont	2010		0	0	0	0
		E-11	0	0	0	0
		E-12	0	0	0	0
		E-13	0	0	0	0
	2011		0	0	0	0
		E-11	0	0	0	0
		E-12	0	0	0	0
		E-13	0	0	0	0
	Total		0	0	0	0
Service Center Totals	2010		16,894	13,744	3,889	6,352
	2011		13,794	8,712	1,998	4,401
Grand Total			30,688	22,456	5,887	10,753

¹ E-11 is an immigrant classification for an alien with extraordinary ability

² E-12 is an immigrant classification for an outstanding professor or researcher

³ E-13 is an immigrant classification for a multinational executive or manager

