



# Questions and Answers

## USCIS Service Center Operations – American Immigration Lawyers Association (AILA) Teleconference

May 25, 2011

### Overview

On May 25, 2011, the USCIS Service Center Operations Directorate hosted an engagement with AILA representatives. USCIS addressed questions related to the National Security Entry-Exit Registration System (NSEERS), Requests for Evidence, the EB-1 visa category, and court case decisions. The information below provides a review of the questions solicited by AILA and the responses provided by USCIS.

### Questions and Answers

**Question 1:** AILA welcomes the April 28, 2011, notice in the Federal Register removing designated countries from the National Security Entry-Exit Registration System (NSEERS). That Notice also provides that nationals and citizens of the countries that had been listed are no longer required to register. As a result, ICE will not process a national or citizen of a formerly-listed country for late NSEERS registration. Will USCIS continue to deem aliens inadmissible for failure to register, or will prior noncompliance no longer be an issue?

**Response:** USCIS management is reviewing the new policy and will make a determination soon concerning NSEER cases in the pipeline.

**Question 2:** Could SCOPS advise whether there is any particular time frame within which RFE responses are to be evaluated once received or when it would be appropriate to follow up if no action has occurred since the RFE response was submitted?

**Response:** Service Centers strive to process and adjudicate RFE responses within 30 days of receipt. Within this timeframe seven calendar days are allotted for the contractor to process and deliver to adjudications for final action. If you do not receive notice of action by the 30 day mark, please contact NCSC for SRMT creation of inquiry.

**Question 3:** Could SCOPS please advise whether a cap-exempt employer can ever request a cap subject H-1B number, and if so, under what circumstances?

**Response:** When a petitioner is statutorily exempt from the cap, it may not choose to take a cap number.

**Question 4:** Does SCOPS have any additional information respecting what is causing the 12,000 drop in EB-1 visa demand for FY 2011 reported by DOS in the May 2011 Visa Bulletin? Presently available public statistics only deal with FY 2010 and 2009 numbers.

**Response:** No. As we indicated at April 7<sup>th</sup> meeting, USCIS cannot provide that information since visa issuance is done by Department of State. Please note that any attribution by DOS that USCIS has seen a drop in receipts is not accurate. Overall filings in the EB-1 categories have seen approximately a 1% drop when compared to last year filings.

**Question 5:** Could SCOPS advise respecting the Service's current position on the applicability of cases such as *Buletini v. INS*, 860 F. Supp. 1222 (E.D. Mich. 1994), *Muni v. INS*, 891 F. Supp. 440 (N.D. Ill. 1995), *Racine v. INS*, 1995 U.S. Dist. LEXIS 4336, 1995 WL 153319 (N.D. Ill. Feb. 16, 1995), *Gulen v. Chertoff*, 2008 U.S. Dist. LEXIS 54607 (E.D. Pa. July 16, 2008), and *Russell v. INS*, 2001 U.S. Dist. LEXIS 52 (E.D. Ill. Jan 4, 2001) to the adjudication of EB-11 and EB-12 cases? Is it the position of USCIS that the only remaining relevant case is *Kazarian v. USCIS*, 596 F. 3d. 1115 (9<sup>th</sup> Cir. 2010) and that *Kazarian* effectively "overruled" *Buletini* and other prior cases?

**Response:** The cases listed within the first part of the question (*Buletini*, *Muni*, *Racine*, *Gulen*, and *Russell* [sic]) are District Court decisions and although they can be persuasive in deciding similar cases, they are not binding on USCIS. The *Kazarian* case was a Circuit Court decision and thus binding on USCIS for cases that fall within that circuit's jurisdiction.

Via policy memorandum, USCIS adopted a two-part adjudicative approach to evaluating evidence set forth by the Ninth Circuit in *Kazarian v. USCIS*, 596 F.3d 1115 (9 Cir. 2010) in certain form I-140 petitions, independent of jurisdiction. This policy memorandum did not imply that *Kazarian* was the only remaining relevant case law, nor did it discuss that it effectively "overruled" *Buletini* and other prior cases.

USCIS provides comprehensive training to its officers, including thorough analysis of applicable statutes, regulations, and case law.

**Question 6:** Could SCOPS advise what happens if an alien has a last name that is too long to fit into the pre-designated fields on the Lawful Permanent Resident Card? For example, one member reports that his office represents an applicant whose last name has 31 letters and a space. The I-485, I-131, I-765 and ASC receipts all have the name truncated. The applicant is concerned that the LPR card will have an incorrect last name if issued as in the receipts.

**Response:** The last name field on the I-551 Permanent Resident Card is a variable field holding between 26 and 28 characters depending on the size of the letters in the name. If the last name exceeds the number of available characters, the name is truncated in the last name field on the front of the card. However, the last name will appear in full in the machine readable zone at the bottom of the card, and the full name will also be embedded in the optical stripe.