



# Questions and Answers

## USCIS Service Center Operations Directorate (SCOPS) and American Immigration Lawyers Association (AILA) Meeting November 30, 2011

### I. Overview

On November 30, 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.

### II. Questions and Answers

#### 1. I-797 Receipt Notices and Other USCIS Correspondence

We are grateful to Director Mayorkas and USCIS for the October 20, 2011, announcement that USCIS will resume processing of I-797 receipt notices according to procedures in effect prior to the implementation of the CLAIMS 3 upgrade that went into effect on or about September 12, 2011. Please confirm that in addition to receipt notices, other notices, such as Requests for Evidence, Notices of Intent to Deny/Revoke, Notices of Approval, and similar correspondence will be sent to the attorney of record. Please also describe interim steps that parties and their representatives may take during the estimated 4-6 week transition period to assure that notices go to the addresses designated by petitioners and applicants, such as entering the representative's address on forms, including USPS Postal Express or courier (e.g., FedEx, UPS, etc.) mailers, etc.

**USCIS Response:** Beginning November 30, 2011 USCIS plans to make the systems changes to revert back to its pre-September 12 notice mailing policy. USCIS can confirm that this change affects all notice types. The change will occur in two steps - at California Service Center (CSC) and Vermont Service Center (VSC) beginning November 30 then full deployment to the remaining centers on December 5. Interim guidance is unnecessary since the change will occur on the day of this meeting.

#### 2. Advanced Degree H-1B Cap Exemption

Would SCOPS please clarify whether USCIS has approved sufficient H-1B petitions for beneficiaries who hold U.S. advanced degrees to exhaust the 20,000 exemption from the H-1B cap for holders of U.S. advanced degrees?

**USCIS Response:** USCIS has accepted and identified a sufficient number of H-1B petitions as exempt under INA 214(g)(5)(C) to exhaust the U.S. advanced degree cap exemption. U.S. advanced degree petitions filed subsequent to the 20,000 petitions being identified as exempt from the cap were automatically rolled over into the regular cap unless the petition was otherwise exempt.

### 3. Processing Times

AILA members continue to have a number of questions regarding actual versus posted processing times and the appropriate procedures to make inquiries with the National Customer Service Center (NCSC) if a case appears to be beyond processing times. Would SCOPS please advise respecting the relationship between current posted processing times and actual processing times since actual times in several categories (I-129 and I-824 for example) appear to be longer than posted times even when one accounts for the 45 day lag between gathering and posting the data.

**USCIS Response:** USCIS strives to complete cases on the “first in – first out” business practice. There are many cases that are completed out of sequence due to issues such as requests for further information from the applicant. The processing time calculation assumes the first in – first out method, therefore even though the calculations may indicate the Service is processing all cases within established processing time goals, there may be some cases that seem to be processed outside the time limit due to the fact that those cases have been put into active suspense. The processing time calculation is based on the volume of “active” pending cases as represented by the number of weeks or months of new application receipts recorded. Active pending cases are those cases that are available for processing, as opposed to active suspense cases that are waiting for applicants to accomplish a step in the process such as biometric appointments or providing evidence. USCIS currently calculates its processing times using active pending case volumes. An example of the process used to calculate processing times is as follows: if the active pending was at 200 cases for the reporting month, and for the past four months the receipts were exactly 50 cases each month, the processing time would be calculated as four months.

The processing times are calculated from final statistics compiled during the prior month. Based upon the methods currently used to collect performance data, USCIS requires 30 days to conduct quality control audits and to make corrections before final data can be published. Another 15 days is needed to post the processing times on the web. USCIS publishes its official statistics only after all data is reconciled. At the conclusion of each reporting month, performance statistics are sent to the Office of Performance and Quality (OPQ) in headquarters where the data is compiled and reconciled. Most often the OPQ, Performance Management team will complete the reconciliation by the end of the month. As an example, the reconciliation for the month of January 2011 was completed on the 28th day of February 2011. At that time, processing times are calculated and sent to the field offices for their review and acceptance or rebuttal. The offices are instructed to return their findings by the 8th day of the next month to enable OPQ to finalize the processing times and get them posted to the web page by the 15th day of the month - 45 days after the end of the actual performance month.

### 4. NCSC Inquiry Timing

Would SCOPS please advise as to the proper timing of an NCSC inquiry when a case appears outside the posted processing times.

**USCIS Response:** Customers are entitled to request that a Service Request Management Tool (SRMT) ticket be generated when their application has been identified as pending longer than the currently posted processing time for the benefit type being sought. As noted on the processing time page, if the office is processing a particular type of application in less time than our processing goal, the processing time will be expressed in months (for example, if the office is processing naturalization applications in less than our five month goal, the processing time will state “Five Months”). However, if that office is taking longer than our processing goal to handle the form type in question, you will see the filing date (e.g., “April 10, 2003”) of the last case we processed on the “As of:” date shown on the processing time table. Additionally, the processing time page provides the following message to further assist customers:

IMPORTANT: If your receipt notice date is earlier than the processing date shown, we suggest you call our USCIS Customer Service Office at 1-800-375-5283 for assistance.

## **5. Increase In Employment Based I-485 Petitions**

The December 2011 Visa Bulletin shows a dramatic jump in Indian and PRC E-2 priority dates. Is USCIS putting any special procedures into place to handle what will likely be a dramatic increase in employment based I-485 petitions? Is there anything AILA or its members can do to facilitate the smooth processing of this anticipated substantially increased number of filings?

**USCIS Response:** SCOPS is working with the appropriate Service Centers to ensure that processing of the anticipated increase in caseload is considered and balanced within the overall priorities and mission of USCIS, such that new filings are adjudicated within target processing times. SCOPS has made several preparations in anticipation of the increase in employment-based I-485 applications resulting from advancement of the India and China second-preference cutoff dates. We have estimated the volume of new filings based on approved I-140s and have provided these estimates to Lockbox Operations so that the lockboxes are prepared to handle any increase. We have also arranged with Lockbox Operations to receive reports of daily receipts of I-485s and concurrently filed I-765s and I-131s. SCOPS has also notified the ASC branch in the Enterprise Services Directorate of the anticipated increase in filings so that Application Support Centers (ASC) are prepared to handle any resulting increase in appointments. AILA members can assist by carefully monitoring the visa bulletin and submitting complete filings so as to minimize time spent perfecting the record after filing.