



Questions and Answers

USCIS International Operations – American Immigration Lawyers Association (AILA) Meeting October 5, 2011

Overview

On October 5, 2011, the USCIS International Operations Division hosted an engagement with AILA representatives. USCIS discussed issues related to waivers of inadmissibility, immigration violation for minors, international adoptions, and changes to overseas filing of I-130 petitions. The information below provides a review of the questions solicited by AILA and the responses provided by USCIS.

General Issues

Question 1: What is the status of the new case management system CAMINO? Can the International Operations Division give us an update on when online case status and processing times will be available?

Response: International Operations Division has been using CAMINO now since August 2010. All overseas adjudications, except refugee resettlement adjudications, are tracked in CAMINO. Since we deployed the new system, we have continued to analyze data integrity and to identify and correct system errors, including in reporting capabilities – as is common in any new electronic case management system. Our next major change to the database will incorporate into CAMINO the ability to track requests for humanitarian parole, which currently are tracked in a different, stand-alone, case management system. Once that is accomplished we intend to develop the requirements to implement system changes that will enable the public to track the status of cases in CAMINO on-line. With respect to processing times, we are very close to being able to publish statistics related to processing times. The data will reflect the percentage of cases processed within our target processing times and the number pending outside of the target processing times, by office and by form type. We will begin with Forms I-601, and follow shortly there-after with other types of adjudications managed by USCIS offices overseas.

Question 2: What is the status of the International Operations page on the USCIS website? Are there still plans to include SOPs, initiatives, fact sheets, and information on I-601 processing? Does RAIO have a timeline on including this information on the website?

Response: There is general information about the USCIS International Operations Division on the USCIS website. We have recently developed a quick link to enable customers to more quickly locate information about our overseas offices. www.uscis.gov/international. We have updated and standardized the information on the office websites and included information about our most recently issued policy guidance related to requests to expedite Forms I-601. We hope to add links to processing

times in the near future. With respect to Standard Operating Procedures and policy guidance, we are working to follow the more recent agency policy to consolidate policy and operational guidance in a central location and will be incorporating our guidance into the Adjudicators Field Manual. For example, the policy guidance on processing requests to expedite Forms I-601 was incorporated into that manual. However, we still aim to provide links to any new policy guidance related to overseas operations on our website.

I-601 Waivers

Question 3: Please provide us with the current approval rates and processing times for I-601 applications:

- i. at all overseas district offices; and
- ii. at the field offices within each district (if possible), specifically for those filed in Ciudad Juarez (CDJ).

[We have received good reports on decreased processing times for I-601s adjudicated at the USCIS offices in Athens, Anaheim, Lima, Guatemala City, and Bangkok. We have also noticed a significant increase in processing times of triage cases at CDJ.]

Response: Our preliminary data for Forms I-601 in FY2011 are as follows:

Received:	23,124 (Includes reopened cases after I-290B)
Completed:	21,352
Pending end of year:	9,072
Approval Rate total:	84%
Approval Rate Bangkok District:	54%
Approval Rate Rome District:	50%
Approval Rate Mexico City District:	88%
Approval Rate Ciudad Juarez	90%
(Includes Mexico F.O., Monterrey F.O., and HQ Components)	

Processing Times:

- Percent of cases completed within 6 months (excluding time due to waiting on applicant – for example, to respond to RFE): 74% (Target was 70%) [Note that 73% were processed within 6 months actual processing time]
- Percent of cases pending more than 6 months (excluding time due to applicant delay): 5%
- This fiscal year, we decreased the number of I-601s pending more than 6 months by 82%.
- We will be publishing by post shortly.

Question 4: Does the USCIS have plans to change the filing procedure for I-601s to require all waiver applicants to file I-601s at a lockbox within the United States? If so, will waiver applicants who are consular processing be able to file their I-601s before their consular interviews? For consular processing cases, will the USCIS adjudicate these I-601s at offices or service centers within the United States or will the agency forward them to the USCIS offices abroad? What does the new Lockbox filing procedure

mean for CDJ's current case adjudication program in terms of adjudication time? Does RAIO know when this new process will be implemented?

Response: As we indicated in prior meetings and stakeholder calls, USICS is considering implementing a new process that will require that Forms I-601 be filed at a USCIS Lockbox and then will adjudicate them in the U.S. We expect to have a stakeholder call on Form I-601 filing procedures in the near future and so would like to defer this discussion for that call.

Question 5: At our [last meeting in November 2010](#), RAIO informed us that it was refining the checklist for the I-601 application. Has this checklist been finalized and implemented (AILA Doc. No. 11082964)?¹

Response: Yes, we finalized the checklist and used it to conduct a test quality assurance peer review in FY2011 and will continue to use it as we implement a formal quality assurance program.

Question 6: At our last meeting in November 2010, RAIO informed us that it was in the process of updating the standard operating procedure on Form I-601 and that it expected to issue the update of the manual by the end of the second quarter of FY2011. Do you have an update on projected release of this SOP?

Response: We did issue a revised draft SOP to address changes in the law (e.g., HIV no longer being an inadmissibility ground). We are implementing the SOP in draft form, so that our field can identify any issues while we go through the formal clearance process. At the same time, guidance on processing Forms I-601 is being developed for domestic adjudicators of Forms I-601. Our aim will be to consolidate international and domestic guidance so that all guidance is included in the Adjudicators Field Manual – both for overseas officers and domestic officers.

Question 7: We continue to receive reports of delays on the transfer of files from the DOS to the USCIS at certain posts for I-601 adjudication. This is not an issue at CDJ, now that USCIS is collecting I-601s, and does not appear to be a problem at the following offices: Athens, Anaheim, Bangkok, Guatemala City, and Lima.

Response: It would be most helpful if you could provide us examples of locations where there is a problem and specific examples, so that we can track those down and identify why there are delays.

Immigration Violation for Minors

Question 8: In November 2010, we provided RAIO with a memorandum of law regarding diminished culpability or absence of culpability for minors (under age 18) who committed immigration violations, especially in regard to false claims of citizenship and the permanent bars under INA §212(a)(9)(C)(i). We understand that RAIO forwarded our memorandum to the USCIS Office of Chief Counsel for consideration. Have you received any feedback from this office on this issue?

Response: Whether there is any “minor’s exception” with respect either to section 212(a)(6)(C) or to section 212(a)(9)(C), and what the scope of any such exception might be, are issues currently pending

¹ *AILA/USCIS International Operations Liaison Meeting Q&As (11/19/2010)*, AILA Doc. No. 11082964, <http://www.aila.org/content/default.aspx?docid=36789>, <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=3c62e96f67cdd210VgnVCM100000082ca60aRCRD&vgnnextchannel=994f81c52aa38210VgnVCM100000082ca60aRCRD>

before the Board of Immigration Appeals. For this reason, USCIS does not consider it appropriate to comment on these issues.

Adoption Issues

Question 9: Habitual Residence (HR):

- a. The [USCIS Scialabba and Neufeld Memorandum](#), dated October 31, 2008, requires a letter from the child's Central Authority (CA) to make a determination regarding the child's habitual residence (AILA Doc. No. 08103190).² AILA members active in the field have learned that many civil courts in the U.S. and abroad involved in adoptions, adopting families, and their attorneys are not aware of the habitual residence requirement. AILA suggests that USCIS embark on a new public awareness campaign and coordinate that campaign with the State Department, so that posts abroad can conduct outreach with the civil authorities involved in adoption issues in their host countries. In conjunction with the renewed public awareness campaign, AILA further suggests that USCIS temporarily suspend the habitual residence determination requirement for a period of time during the public awareness campaign.
- b. In the event the country abroad changes the entity authorized to issue habitual residence letters, please confirm that USCIS will recognize the validity of habitual residence letters issued by the country authority properly designated at the time the letter was issued.
- c. As attorneys and families become aware of the October 31, 2008 Memorandum, they are obtaining the habitual residence letter after the fact and then filing the letter with the Court. Then, the court issues a Supplemental Court Order. Please confirm that USCIS will approve the I-130s in such cases?

Response:

a. Both USCIS and Department of State (DOS) conducted public awareness campaigns in conjunction with the U.S. ratification of the Hague Adoption Convention and its entry into force on April 1, 2008. Although the regulation at 8 CFR 204.2(d)(2)(vii)(D) and (F) addressing habitual residence was adopted following sufficient public notice, USCIS re-opened and extended the public comment period for an additional 60 days to enable the public to thoroughly review and offer comments. Both the regulations and guidance to USCIS adjudicators clearly specify what must be done to adopt a child who is already in the United States but who is deemed still habitually resident in another Convention country. The corresponding USCIS policy memorandum and Adjudicator's Field Manual update have been available to the public at www.uscis.gov since October 2008. Despite these efforts to provide public information on the issue of habitual residence, we understand that you believe the adoption community might benefit from additional outreach on the issue. In response, we will share your concern at our next DOS/USCIS adoption working group meeting and work to incorporate the issue into upcoming USCIS public presentations wherever possible. We do not believe, however, that it would be appropriate to "suspend" the habitual residence determination requirement as it has been consistently applied since April 1, 2008.

² *Scialabba & Neufeld Memo on Intercountry Adoption under Hague Convention*, AILA Doc. No. 08103190, <http://www.aila.org/content/default.aspx?docid=31201>, http://www.uscis.gov/USCIS/Laws/Memoranda/Static_Files_Memoranda/Archives%201998-2008/2008/Hague_AFM_memo31oct08.pdf

b. If the Central Authority for a Convention country were to change the entity authorized to make determinations as to a child's habitual residence, USCIS will recognize the issuing authority properly designated by the Central Authority at the time of the issuance of the written statement.

c. Eligibility for approval of a Form I-130 must exist at the time of filing per 8 CFR 103.2(b)(1). Thus, a Form I-130 could not be approved unless there was a valid adoption at the time of filing. IAA section 301(c) suggests that a U.S. state court may not actually have had jurisdiction to act in these cases. However, provided that the Central Authority does find that the child was not habitually resident in the other Convention country, USCIS will accept a supplemental court order not as a new adoption but as a clarification of the original order. Provided all other requirements of section 101(b)(1)(E) are met, the Form I-130 could be approved.

Changes to Overseas Filing of I-130 Petitions

Question 10: As included in [AILA's comments of July 18, 2011](#),³ to the [changes to the overseas filing of I-130s](#), has it been considered to allow those residing in jurisdictions outside of a USCIS office overseas to mail in or personally deliver an I-130 to the USCIS office (AILA Doc. Nos. 11051762 and 11071843)?⁴ Consular posts often designate a specific mailing procedure for applications and petitions; therefore, we believe this would not cause any undue concern to USCIS. Such applicants would certainly still have the option of filing with the lockbox, if that were their preference.

Response: Form I-130 petitioners residing outside of the United States are permitted to file a petition with an internationally located USCIS office only if they reside in that country. The recent filing changes did not alter the jurisdiction of our international offices but rather required international petitioners who reside in countries where USCIS does not have a presence to file with the USCIS Lockbox except in limited instances where USCIS authorizes the filing with the Department of State. It is very expensive for USCIS to maintain an international presence and our offices are quite small. Space is limited in the Embassy/Consulates where we work and we cannot quickly adjust staffing size overseas as workloads increase or decrease. Allowing petitioners in countries where USCIS does not have a presence to file with an international USCIS office could significantly impact the workload of those offices and prevent international staff from timely processing other existing workloads, such as waiver requests. Therefore, a petitioner residing outside the U.S. where USCIS does not have a presence must mail his or her petition to the USCIS Lockbox, not the USCIS office that has jurisdiction over the petitioner's country of residence, except in instances where there is an emergent situation and USCIS allows DOS to receive the filing.

Question 11: Last month, USCIS released an [Interim Policy Memo](#) Regarding Process for Responding to Requests by DOS (PM) to Accept a Locally Filed Form I-130 (AILA Doc. No. 11081020).⁵ It

³ *DHS Final Rule on Revised Filing Instructions for Petitioners Abroad*, AILA Doc. No. 11051762, <http://www.aila.org/content/default.aspx?docid=35423>, <http://www.gpo.gov/fdsys/granule/FR-2011-05-17/2011-11997>

⁴ *AILA Comments on USCIS Changes to Overseas I-130 Filings*, AILA Doc. No. 11071843, <http://www.aila.org/content/default.aspx?bc=6715|8921|36242>

⁵ *USCIS Interim Memo on Requesting Expedited Local Processing of Form I-130*, AILA Doc. No. 11081020, <http://www.aila.org/content/default.aspx?docid=36594>, http://www.uscis.gov/USCIS/Laws/Memoranda/2011/August/Locally-Filed_I-130s_Interim_PM_Approved_for_Pubic_Comment_8-8-11.pdf

discussed that USCIS may at times authorize the DOS to accept and adjudicate an I-130 petition. [AILA prepared comments](#) to this and would appreciate feedback on the following suggestions (AILA Doc. No. 11082431):⁶

That the following also be considered “exceptional circumstance:”

- *Multinational Expatriate Re-Assignment to U.S.:* A USC petitioner employee of a multinational company assigned outside the U.S., who is then re-assigned to work for the company (or subsidiary, etc) in the U.S., yet has been provided insufficient notice to process the I-130 of his dependents to ensure the re-assignment/move will be made together with his/her dependents.
- *Immediate start of new employment in the U.S.:* A USC petitioner who has been offered a job in the U.S. and is required to start work within the next three months.

Can USCIS offer an update on the consideration of suggestions made by AILA to expand the examples of instances where overseas jurisdiction of an I-130 might be exercised?

Response: The interim policy memorandum does not specifically mention as an exceptional circumstance members of the business community whose job requires them to relocate on short notice. However, USCIS believes that the current policy is broad enough that members of the business community facing relocation on short notice would qualify to file with the Department of State where there is no USCIS presence. USCIS will explicitly include members of the business community in exceptional circumstances within the final policy memorandum.

Question 12: The PM also describes the “authorization” process for a request for DOS filing. As mentioned in the comments, the PM does not indicate how the applicant would bring such a case to the attention of a consular officer nor ensure the consistent evaluation of the “exceptional circumstance” criteria by a consular officer. As the ultimate decision of whether DOS is authorized to take such a case lies with the Field Office Director (FOD), it seems such requests should simply be sent directly to the appropriate FOD.

Can you please clarify how USCIS envisions an applicant or counsel should bring such a case to the attention of a consular officer? Can you please clarify if there is any reason to not allow an applicant or counsel to bring such a case directly to the attention of the FOD, since the FOD makes the actual decision to authorize DOS filing?

Response: USCIS requests that counsel contact the Consular Section. Each post provides guidance on how to contact the Consular Section on their websites. There is also a general inquiry email to contact the Department of State with questions. Our procedures require that the request come through the Department of State, because the Department of State will ultimately be responsible for adjudicating the petition, should the request be approved and the petition be clearly approvable upon filing. In our view, the processing for coordinating between the two departments works better if the request comes via the Consular Section. However, we will monitor this situation and adjust if necessary.

⁶ *AILA Comments on USCIS Interim Memo to Change Overseas I-130 Filings*, AILA Doc. No. 11082431, <http://www.aila.org/content/default.aspx?docid=36751>