



# Questions and Answers

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

August 8, 2012

### Overview

August 8, 2012, the USCIS Service Center Operations Directorate hosted an engagement with AILA representatives. USCIS addressed questions related to Requests for Evidence, the form I-797, I-140 petitions, and H-1B cap petitions. The information below provides a review of the questions solicited by AILA and the responses provided by USCIS.

### Questions and Answers

**Question 1:** AILA continues to see Requests for Evidence (RFEs) on employment based adjustments asking for documents already submitted – primarily marriage and birth certificates. Examples include: SRC1190301269, SRC1290042242, and LIN1190890522. In addition, RFEs are issued for birth/marriage documents where they are not required for adjudication. For example, a principal applicant’s adjustment should not require copies of her children’s birth certificates.

Please explain when birth and marriage documents may be required, other than instances outlined in the regulations.

**Response:** Service Center Operations (SCOPS) cannot comment on the specific cases at this time due to pending review. However, during the process of de-bundling applications where the I-140, I-765, I-131 and I-485 were sent to be adjudicated by different units, some identification documents such as birth and/or marriage certificates may have been separated from the I-485 application to provide identity documentation for the I-765/I-131 applications. Thus, RFEs could have been sent for the birth and or marriage certificate that were thought to be missing in the I-485 package. However, that practice is no longer in effect and the identity documents are kept with the I-485.

Generally, birth and marriage documents may be required in those instances outlined in the regulations and applicable form instructions. In other instances, such documents may be requested in order to assist in the determination of the applicant’s eligibility for the benefit sought. The adjustment

application for the Principal Applicant generally does not require proof of marital status, or copies of the principal's children's birth certificates, as the principal applicant is adjusting on the basis of employment, not familial relationship.

**Question 2:** The use of plain white paper to issue I-797 receipt notices has created problems for aliens seeking certain state licenses and benefits, particularly those applying for Driver's Licenses. Members from several states, including Ohio, Georgia, Minnesota, Virginia, and South Carolina report that their state motor vehicle administrations are not accepting the plain paper notices.

Would SCOPS please reach out to the SAVE program to better coordinate information available to agencies accessing alien status information through the SAVE program?

**Response:** USCIS appreciates AILA's concern and will consider possible changes, including revising information posted on the USCIS website and language changes to the Form I-797C, which may consequently lessen impediments for aliens who are eligible to pursue certain state licenses and benefits, such as Driver's Licenses. We would appreciate more information regarding the circumstances under which state DMVs reject Form I-797C receipt notices, including specific examples.

**Question 3:** In addition, the bold language at the top of the receipt notice – indicating that the receipt notice does not confer any benefit – is problematic. Receipt notices are proof of timely filed extensions, are used for H-1B portability and I-9 purposes, and are essential to documenting work authorization pursuant to the 240 day rule.

Would USCIS please revise the language on the plain paper I-797 receipt notice to clarify that it is evidence of the filing of an application or petition, which may permit the applicant or beneficiary to remain in the United States, to change H-1B employers, or to continue employment during the review and adjudication of certain nonimmigrant temporary worker petitions?

**Response:** USCIS appreciates AILA's concern and will consider possible changes, including language changes to the Form I-797C, which may consequently lessen impediments for aliens required to establish continued work authorization and valid immigration status.

**Question 4:** AILA received several reports of I-140 petitions requesting consular processing not being forwarded to the National Visa Center (NVC). This appears to primarily be a problem at the Texas Service Center (TSC). Examples where consular processing was indicated on the I-140. What steps should our members take to insure timely notification by USCIS to the NVC?

**Response:** In general, if the petitioner indicates on Page 2 of Form I-140 (Part 4, Item 1) that the beneficiary will seek consular processing, USCIS will forward the approved petition to the NVC.

**Question 5:** Please confirm that if there is an error on the I-907 and/or the G-28 – but all initial evidence, fees, and required forms are complete and accurate and separate checks are submitted – that the entire petition will not be rejected. Instead, only the I-907 and/or G-28 will be rejected, but the petition will be accepted for processing.

**Response:** This is correct for premium processing filings made at the service centers. However, for premium processing filings made at lockboxes, the underlying petition will be accepted only if it is properly filed at the lockbox. It would not be forwarded for processing at a service center if that is the proper filing location, such as for a Form I-129. In such an instance it would be rejected.

**Question 6:** If a premium processing case is properly prepared and submitted with separate checks but is sent to the Lockbox rather than the Premium Processing Unit (PPU), will USCIS accept the package for regular processing and reject the I-907 or forward the entire packet to the PPU for PPU processing.

**Response:** In such an instance, if filed at a lockbox we will accept only an I-140 case, with any accompanying forms, for regular processing and reject the I-907. We will reject an I-907 with an I-129, and any accompanying forms, in all instances if received at a lockbox vs. a service center PPU.

**Question 7:** AILA was alerted to a number of erroneously-rejected cap-subject H-1B petitions. For example, in one case, the petitioner was advised that the check was incorrectly completed, but obtained a letter from the bank confirming it was correct. In another example, the petition was rejected for being “cap exempt” – noting that it should have been filed at the California Service Center (CSC). This was incorrect, and by the time it was returned, it was too late to re-submit. AILA requests USCIS to provide a protocol to ensure that erroneously-rejected cap-subject H-1B petitions will be accepted.

**Response:** If the petitioner believes that an H-1B cap petition that was filed before the FY13 was erroneously rejected, the petitioner can submit the petition to the attention of “CRU Supervisor” at the address listed on our form instructions. The envelope should also be marked “Do Not Open in Mailroom.” The petitioner must include evidence that the petition was filed before the cap closed, as well as evidence to show that the rejection was improper.

**Question 8:** Members report receiving RFEs that contain boilerplate language and do not specifically reference or acknowledge documentation included with the original submission. These multi-page RFEs place an undue burden on petitioners, particularly when the deficiencies are not clearly articulated (WAC1218950664, WAC1218230954, EAC1216851550, EAC1217653510). Please comment on efforts to ensure that RFEs are issued in accordance with the [Yates Memorandum “Requests for Evidence and Notices of Intent to Deny” dated February 16, 2005](#), and the [Neufeld Memorandum “Removal of the Standardized Request for Evidence Processing Timeframe Final Rule, 8 CFR 103.2\(b\)” dated June 1, 2007](#) (AILA Doc. Nos. 05021810 & 07062171).<sup>1</sup>

**Response:** Thank you for bringing these examples to our attention – appropriate follow-up has taken place where necessary. USCIS issues RFEs when additional evidence is needed for a thorough and correct decision and we continue to strive to improve the process and make those requests as complete and informative as possible. The quality review procedures in place for RFEs at the Service Centers include a review of the content and appropriateness of the RFE if one was issued in the case prior to the final decision. USCIS has also continued its effort to standardize and improve the format and content of

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<sup>1</sup> USCIS Rescinds RFE Memo and Provides New Guidance, AILA Doc. No. 05021810, <http://www.aila.org/content/fileviewer.aspx?docid=12394&linkid=42904> and Neufeld Memo on the Removal of the Standardized RFE Processing Timeframe, AILA Doc. No. 07062171, <http://www.aila.org/content/default.aspx?docid=22708>

requests for evidence (RFEs). To that end, we are still in the process of developing standardized RFE templates for some categories of cases and have deployed standardized templates for other categories of cases. These deployments are accompanied by training and follow up with Service Centers in an effort to improve on the format and content of RFEs. In order to achieve consistency, USCIS has included some standard language that will appear in RFEs, including informational sections and lists of suggested evidence. This standard language, when added to a section on each specific eligibility requirement that has not been met, includes a statement of what was submitted, why that evidence was deficient, and the lists of suggested evidence that might be submitted to resolve the issue. All of the case examples listed above are I-129 petitions requesting L classification. The standardized RFE templates and training have not been deployed yet for the L category of cases. Until this deployment happens, we continue to direct the Service Centers to include, in each RFE, a discussion of the evidence submitted and why it is deficient. The deployment of the L RFE templates in the future and the accompanying training will further reinforce compliance with this directive.

**Question 9:** Members report two specific issues related to physician licensure coming out of the CSC. First, the CSC has been denying H-1B petitions for medical residents (i.e., physicians in training) for failure to meet the licensure requirement. State medical boards generally do not require licensure for physicians in training until they complete the second year (for U.S.-trained physicians) or third year (for International Medical Graduates) of training. In fact, residents are not usually eligible to apply for a license until they complete their first year of training or later. Please remind service centers that a full and permanent license is sufficient, notwithstanding the need for periodic registration.

**Response:** The burden is on the petitioner to establish that the position in question is exempt from licensure or that the beneficiary is in possession of a license or other authorization as required by the state of intended employment to practice medicine. Adjudicators generally do not limit the validity period if it does not appear that there is a time limit for the exemption or if the exemption can be renewed. Adjudicators may, however, limit the validity date if there is a strict time limit for exemption from licensure. SCOPS requests that AILA provide us with receipt numbers of examples of cases where it believes that the validity period was improperly limited even though there was no expiration to exemption or the petition included evidence that the exemption was renewable so that we may examine this issue further.

**Question 10:** On a related note, the CSC advised members that the Velarde Memorandum from May 20, 2009, [Requirements for H-1B Beneficiaries Seeking to Practice in a Health Care Occupation](#), covers only those professions enumerated under 8 CFR 212.15(c) and does not apply to physicians (AILA Doc. No. 09052766).<sup>2</sup> As a result, the CSC has been limiting the validity of H-1B petitions for physicians to one year or the end date of a renewable permanent license and not granting a full three-year period. Although the Memo was written with other licensed professions in mind, its principles should apply to physicians as well.

Moreover, the regulation at 8 C.F.R. §214.2(h)(4)(v)(E) reads:

(E) Limitation on approval of petition. Where licensure is required in any occupation, including registered nursing, the H petition may only be approved for a period of one year or for the period that

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<sup>2</sup> *Velarde Memo Provides Guidance on Requirements for H-1B Beneficiaries Seeking to Practice in a Health Care Occupation*, AILA Doc. No. 09052766, <http://www.aila.org/content/default.aspx?docid=29112>

the temporary license is valid, whichever is longer, unless the alien already has a permanent license to practice the occupation. An alien who is accorded H classification in an occupation which requires licensure may not be granted an extension of stay or accorded a new H classification after the one year unless he or she has obtained a permanent license in the state of intended employment or continues to hold a temporary license valid in the same state for the period of the requested extension.

Please confirm that evidence that a physician has been issued a full and unrestricted license is sufficient to support approval of an H-1B petition for a full three-year duration, notwithstanding the fact that the state issuing the license requires the physician to periodically register with the state licensing authority with a frequency that may be one or two years.

**Response:** As stated above, the burden is on the petitioner to establish that the position is exempt from licensure or that the beneficiary is in possession of a license or other authorization to practice medicine as required by the state of intended employment. As noted by the CSC, the May 20, 2009 memorandum is specific to health care occupations outlined in 8 CFR 212.15(c) that also meet the definition of a specialty occupation. Physicians are not included in 8 CFR 212.15(c). That said, adjudicators do not generally limit the validity period if the petition includes evidence that beneficiary is in possession of a full and unrestricted license solely based on an expiration date for the license. SCOPS requests that AILA provide us with receipt numbers of examples of cases where it believes that the validity period was improperly limited even though the petitioner submitted evidence that the beneficiary was in possession of a full and unrestricted license to practice medicine in the state of intended employment so that we may examine this issue further.

**Question 11:** I-140 RFEs or Notices of Intent to Revoke (NOIRs) on approved I-140 petitions have been issued questioning the bona fides of a beneficiary's past employment with a company that may now be under investigation. Notwithstanding the present concerns with the former employer's alleged misdeeds, it seems unduly harsh to penalize all former employees of those companies, as many were actual bona fide employees who gained valid work experience (and were never sponsored for any immigrant benefits by those entities). Will the Service fairly consider evidence of actual employment (e.g. payroll records, W-2 tax records, independent confirmation, etc.) to establish that the beneficiaries accrued bona fide work experience with these former employers to support the PERM labor certifications and I-140 petitions filed by subsequent employers?

**Response:** If a Request for Evidence or Notice of Intent to Revoke are received by the petitioner or the representative of record, it is appropriate to address any issue concerning the validity of the job offer by the beneficiary's former employer by including additional evidence of a bona fide job offer with regard to the beneficiary's previous employment the petitioner is using to satisfy any work experience requirement for the benefit sought. To demonstrate that a beneficiary possesses the required experience, the petitioner must submit letter(s) from the beneficiary's current or former employer(s). The letter(s) must include the name, address, and title of the writer(s) and a specific description of the duties performed by the beneficiary. In cases where this primary evidence is unavailable, the petitioner may submit secondary evidence. However, before USCIS may consider secondary evidence, the petitioner must demonstrate that the primary evidence does not exist or cannot be obtained. If secondary evidence also does not exist or cannot be obtained, the petitioner must demonstrate the unavailability of both the primary evidence and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome

the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence. The petitioner has the burden of proof to establish that the beneficiary is eligible for the requested benefit. Please see 8 CFR 204.5(g)(1) and 8 CFR 103.2(b)(2).

**Question 12:** In the April 2012 SCOPS Liaison call, SCOPS indicated that for Outstanding Researcher/Professor petitions an RFE may be issued if the actual employment offer is not provided and, instead, a letter is provided that summarizes the offer of employment. However, there is no regulatory or statutory requirement for the original offer letter, and many employee/employer relationships begin without a formal letter. Moreover, the only reference to an offer letter in the regulations is at 8 CFR §204.5(i)(3)(iii) and states that “*The offer of employment shall be in the form of a letter.*” Please confirm that a letter from the employer included in the petition and indicating that it is “*confirming the offer of employment to [beneficiary] as [position]*” and further confirming that the position is either tenure-track or of an ongoing duration is sufficient for these purposes.

**Response:** USCIS interprets the regulation at 8 CFR 204.5(i)(3)(iii) as requiring a copy of the actual offer of employment made by the petitioning employer to the outstanding professor or researcher. In the event a petitioner proposes to permanently employ an outstanding professor or researcher with no written offer of employment, the petitioner may demonstrate the non-existence of the document and submit secondary evidence (e.g., other documents issued to the beneficiary by the employer in connection with his or her employment) as provided at 8 CFR 103.2(b)(2).

**Question 13:** Questions re new PM-602-0062 “*Exceptions for Permitting the Filing of Form I-601*” posted 5-31-2012 ([I-601 Interim Guidance](#)):

1. When will the form I-601 be added to the NSC Processing Times on the USCIS website?

**Response:** The NSC’s processing time for I-601s filed at a Lockbox facility will not appear on the USCIS website until additional system changes are completed. We expect the processing times to be posted on the USCIS website within a few months. Individuals who file their Form I-601 at a USCIS Lockbox facility may continue to check their case status online.

Please note that the NSC processes I-601s for individuals who require a waiver to support a DOS immigrant visa or K nonimmigrant visa application (Overseas I-601s) as well as I-601s filed in support of an application for Temporary Protected Status pending at the NSC (TPS I-601s).

2. Does NSC (or USCIS) have a goal for processing times for form I-601?

**Response:** The goal for processing Overseas I-601s at the NSC is 3 months.

3. Has a processing unit been set up within the NSC to handle the I-601 case load?

**Response:** The NSC has established a Waiver Unit to adjudicate Overseas I-601s and any associated I-212s filed at the Lockbox facility.

**Question 14:** The February 2012 SCOPS Liaison minutes indicated that 15 days was a reasonable timeframe for a customer to wait once a case reaches the NCSC follow up e-mail stage; however, the “[Contact Us](#)” page of the USCIS website indicates 30 days, while a “[USCIS Update](#)” on the website and a May 31, 2012, [customer service presentation](#) indicates 15 days (AILA Doc. No. 11042871).<sup>3</sup> Please confirm that it is a 15 day wait time before escalating.

**Response:** There is a fifteen day wait time before a case reaches the NCSC follow up email account. We will reach out to the Office of Communications to have the website updated with the correct information.

**Question 15:** Many members are reporting the following as responses to Service Center follow up e-mails:

“Based on your request we researched the status of this case. We are actively processing this case. However, we have to perform additional review on this case and this has caused a longer processing time. If you do not receive a decision or other notice of action from us within 6 months of this letter, please contact customer service at the number provided below.”

“Your case is in the processing queue and will soon be assigned to an Adjudicating Officer for final processing. You should expect to see action on your case within the next 90 days.”

Unfortunately, this response does not provide the attorney or representative with information about the reason for delay and waiting an additional three-months or six-months on a petition that is already outside normal processing times is unreasonable. Please confirm that such cases may be escalated to SCOPS for intervention, and please describe how cases sent to SCOPs are resolved.

**Response:** After the applicant or attorney of record has exhausted NSCS and local remedies, inquiries may be sent to the SCOPSSCATA email box (SCOPSSCATA@dhs.gov). SCOPS personnel will contact the Service Center about the delay and appropriate resolution.

**Question 16:** Given the combined advance parole/EAD document and the photos produced via biometrics, please advise how many photos should be included with adjustment of status application.

**Response:** Two photos should be submitted with the adjustment of status application.

**Question 17:** Please comment on the circumstances in which a two-year AP/EAD document will be issued.

**Response:** The initial AP/EAD document is valid for one year. If, however, the visa regressed between the time the AP/EAD application was filed and adjudicated, the AP/EAD document will be valid for two years. If the applicant seeks to renew the AP/EAD and the I-485 is visa regressed, the renewed AP/EAD document will be valid for two years.

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<sup>3</sup> USCIS Presentation from 5/31/11 Teleconference on Customer Service, AILA Doc. No. 11042871, Q8, <http://www.aila.org/content/default.aspx?docid=35245>

**Question 18:** The [non-minister religious worker provision](#) is scheduled to sunset on September 30, 2012 (AILA Doc. No. 09112467).<sup>4</sup> Will SCOPS implement a procedure to expedite these filings and allow for inquiries prior to the five month processing time listed for I-360s?

**Response:** At the current time, USCIS has no definite plans to expedite I-360 special immigrant non-minister religious worker petitions and related applications (e.g. I-485, I-824, etc.). **Absent a Congressional extension of expiration date, beginning September 30, 2012, USCIS will suspend further processing of any pending I-360, I-485, and I-824 for the nonminister religious workers and their dependents and reject any cases received thereafter. Therefore, the petitioner or the applicant should plan accordingly.**

**Question 19:** AILA values service center stakeholder in-person engagements and would appreciate any updates regarding where and when the next ones, following the joint TSC/NSC Asylum & Refugee meeting, will be (AILA Doc. No. 12071845).<sup>5</sup>

**Response:**

September 2012	<a href="#">National Conference- The National Center for Victims of Crime (New Orleans, LA)</a>
	IACP Annual Conference (San Diego, CA)
September 13, 2012	Fall Conference
October 2012	National Stakeholder Engagement
October 18, 2012	Engagement to discuss the EB5 Immigrant Investor Program
November 2012	T/U/VAWA Training and Media Session (Raleigh/Durham, NC)

**Question 20:** Please provide the most recent organizational chart for each service center.

**Response:** The centers are currently undergoing changes. We will publish an up to date chart at a later date.

<sup>4</sup> *Law Extends USCIS Programs through September 2012*, AILA Doc. No. 09112467, <http://www.aila.org/content/default.aspx?docid=30638>

<sup>5</sup> *Invitation for TSC/NSC Joint Fall Conference*, AILA Doc. No. 12071845, <http://www.aila.org/content/default.aspx?docid=40573>