



Questions and Answers

USCIS International Operations – American Immigration Lawyers Association (AILA) Meeting February 9, 2012

Overview

On February 9, 2012, the USCIS International Operations Division hosted an engagement with AILA representatives. USCIS discussed issues related to waivers of inadmissibility, expedite requests, Juarez Field Office adjudication issues, I-90 application filing, suspended USCIS activities in Yemen, and the organizational structure of USCIS International Operations. The information below provides a review of the questions solicited by AILA and the responses provided by USCIS.

I-601 Waivers Issues

Question 1: Please provide us with the current approval rates and processing times for I-601 applications at all overseas District Offices, and at the Field Offices within each district (if possible), specifically for those filed in CDJ.

Response 1: USCIS is now reporting District Field Offices' processing times for I-601s on a monthly basis, and has currently posted reports for October, November, and December of 2011. The reports include information by office on the number of applications received and completed; the number of cases pending; and the percentage of cases completed within 0-3 months, 4-6 months, 7-9 months, 10-12 months, and over 12 months.

To view the current reports, go to www.uscis.gov/international and click on the "Processing Times at International Field Offices" link on the right. These reports can also be accessed through the individual Field Offices' web pages via the above web address.

In the coming months, USCIS will issue similar information for:

- Form I-130, Petition for Alien Relative
- Form I-730, Refugee/Asylee Relative Petition (following-to-join cases)
- Requests for reconsideration of denials of I-590, Registration for Classification as Refugee

USCIS shares AILA's interest in publishing approval rates. However, this very complicated topic remains under review. We will move forward when USCIS has formalized a means for presenting the data in a context that is useful and clear.

Expedite Requests

Question 2:

Question 2a: What percentage of expedite requests on I-601s are granted?

Response 2a: Unfortunately, USCIS cannot provide that statistic because we do not track expedite requests. In FY 2011, officers indicated that 230 waiver cases were expedited. In the first quarter of FY 2012, officers indicated that 55 waiver cases were expedited, which consistently equates to approximately one percent of our total number of I-601s processed. However, we do not think this accurately reflects all expedite requests. While there is a field in our case management system that allows officers to indicate when a case has been expedited, it is not required that the field be completed and, therefore, we believe that our data are incomplete.

Question 2b: Will USCIS consider all requests to expedite and issue a separate decision on these requests? AILA members have reported waiting five months or more to receive a decision on an I-601 and/or request to expedite.

Response 2b: USCIS does consider all requests to expedite waiver adjudications individually. However, the number of requests is so high that we cannot respond individually. Upon receiving a request to expedite, USCIS sends all requestors an electronic or hard copy notice of receipt, which includes information on the decision-making and -notification processes. The notice of receipt states that it is our formal policy to review each request within five business days of receipt. The notice of receipt also states that USCIS will send a decision notice **only** if the request to expedite is granted, and that **a requestor should assume that the request has been denied if he/she does not receive a decision notice within 15 days.**

Question 3: AILA understands that at some posts (Jerusalem, for example), the DOS Consular Officers conduct in-depth in-person interviews with all waiver applicants and write detailed memos to USCIS either recommending approval or denial of the waiver application. In the vast majority of cases, it appears that USCIS follows the DOS recommendation.

Question 3a: Why is this done at some posts and not at others?

Response 3a: Posts take direction from their regional USCIS Offices and Consular Offices as to what must be submitted in order to complete a waiver package. Differences in regional USCIS and Department of State (DOS) policies and procedures and changes in leadership at USCIS and Consular Offices are just a couple of the reasons for regional variations.

It is USCIS's goal to develop consistent institutionalized procedures between posts and between USCIS and DOS at all levels, and we have taken some important steps in this direction. For example, we are moving toward centralizing the processing of I-601s.

With respect to any recommendations made by DOS Consular Officers, it is important to note that USCIS Officers are not in any way bound by DOS Consular Officer recommendations, and that USCIS Officers make independent decisions based on the evidence before them and the record as a whole.

Question 3b: At what post(s) does this generally occur?

Response 3b: As mentioned above, posts take direction from their regional USCIS Offices and Consular Offices, and differences in policies and procedures have developed over time and over changes in leadership; USCIS does not track these differences. We do acknowledge the need for, and are working toward, consistent and unified policies and procedures.

Question 3c: What level of coordination and training is there between USCIS and DOS in the waiver acceptance/adjudication scenarios discussed above?

Response 3c: DOS recognizes that adjudication authority rests solely with USCIS; USCIS considers facts gathered during DOS' visa interviews as important information to consider, along with all other evidence in the record. There are regular daily exchanges between USCIS Overseas Officers and Consular Officers, and USCIS Overseas Officers routinely provide training and technical guidance on waiver-related issues to Consular Officers at post. We have begun to take the very first steps toward building on our informal exchanges to develop a written protocol.

That being noted, we do believe there is room to improve training coordination and other issues between DOS and USCIS. Where appropriate, we do encourage you to share your concerns related to specific cases with both USCIS and DOS immediately. It is much easier to take action when USCIS has specific cases and patterns to react to, as opposed to anecdotal information.

Question 4: Several AILA members report that their clients waited over six months to receive immigrant visas in their passports after approval of their waiver applications.

Question 4a: What is the average time period between approval of an I-601 and receipt of the immigrant visa in the applicant's passport?

Response 4a: This is in DOS' jurisdiction, so we encourage you to ask DOS directly. For the sake of today's conversation, we did ask our colleagues at DOS, and DOS responded that the timeframe between I-601 approval and immigrant visa issuance depends on a post's workload, interview wait times, the applicant's responsiveness, and any remaining processing requirements.

We have heard that there is some confusion and frustration by the time lapse that sometimes occurs between when an applicant has been notified of a USCIS approval and when DOS actually receives the file. There are a couple of reasons for this delay. If the Field Office and Consular Office are not co-located, the delay can often be attributed to mail, especially if the offices are in separate countries. In addition, USCIS is working through a backlog of cases filed at Ciudad Juarez and has forwarded many adjudicated cases to DOS, which is now working its own way through this backlog. While the mail issue is on-going, the backlog is temporary and USCIS is working closely with DOS to ensure that DOS receives a list of all in-coming cases that it can use to adjust resources and to respond to applicants' inquiries. We would appreciate it if AILA could share with your clients the reasons for these delays, as well as USCIS's and DOS' efforts to resolve them.

Question 4b: Does USCIS coordinate with DOS on this step in consular processing?

Response 4b: USCIS currently sends hard copies of waiver approvals to consular sections. The notification must arrive in the consular section and be matched up with the case file before Consular Officers can resume visa processing.

In general, USCIS does not coordinate with DOS on visa issuance, but we do recognize that, in

Ciudad Juarez, DOS is now in the process of working through the backlog that USCIS just processed. USCIS in Ciudad Juarez immediately provides DOS with waiver approval documents, including documents received from other USCIS Offices that have been helping to process the backlog, so that visa issuance may continue apace. USCIS will occasionally bring to DOS' attention cases that, due to particular urgency, require immediate attention for visa issuance.

Question 4c: Do USCIS and DOS have a goal of completing this step within a certain time period?

Response 4c: This is in DOS' jurisdiction, so we encourage you to ask DOS directly. For the sake of today's conversation, we did ask our counterparts, and DOS responded that upon receipt of a notice of an approved waiver, a consular section would work to process the case to conclusion as quickly as resources allow.

Question 4d: If the applicant does not receive the immigrant visa for several months, what is the best way to follow up?

Response 4d: The applicant should contact the DOS Consular Office where the visa petition is being processed.

Ciudad Juarez Field Office

Question 5: AILA members continue to report a high number of waiver referrals at CDJ. What percentage of I-601s is referred for standard processing?

Response 5: For years, at least 50 percent of I-601s have been approved at vetting and 50 percent of the vetted cases have been referred for standard processing, a rate that has remained consistent over a matter of years. Our most recent review of the vetting "approval" rate indicates that 47 percent are being referred and 53 percent approved at vetting.

Question 6: How many waiver adjudicators are currently at CDJ and will this change in 2012?

Response 6: The Ciudad Juarez Field Office currently has two US citizen staff members: the Field Office Director and one Overseas Adjudication Officer. USCIS will not add any additional staff, because we are moving forward with our initiative to centralize I-601 filing. Because the workload will soon be declining, we could not justify the cost of moving officers and their families to Ciudad Juarez. Instead, USCIS is now detailing staff to assist with the workload and continues to transfer work to other offices.

Question 7: Several AILA members report receiving no response or inadequate responses from cdj.uscis@dhs.gov.

Question 7a: If an applicant/attorney receives no response to e-mail inquiries sent to cdj.uscis@dhs.gov, how should the applicant/attorney follow up with the Ciudad Juarez Field Office Director?

Response 7a: Because of high volume and limited staff – Mexico City received 24,000 inquiries last year alone – USCIS has established procedures to enable staff to focus most of their time on processing cases and therefore do not respond to each and every inquiry.

All email inquiries to cdj.uscis@dhs.gov receive an automated response acknowledging receipt of the inquiry. The response currently advises the sender that there is a 10 month processing time for

CDJ I-601s, and that responses to status inquiries will not be provided until a case is beyond the 10 month mark.

All requests are reviewed according to the following procedures:

- If the inquiry is beyond the 10 month processing time, it will be investigated and a response will be sent within a few weeks. Please note this timeframe may adjust due to the office's workload and adjudicating cases must take priority over responding to inquiries.
- If the inquiry is not beyond the 10 month processing time, it should be resubmitted to cdj.uscis@dhs.gov after the 10 month mark.
- If the inquiry is not beyond the 10 month processing time but the applicant would like to request expedited processing, the automated response provides comprehensive guidance on this process.

Question 7b: May the applicant/attorney e-mail the Ciudad Juarez Field Office Director directly?

Response 7b: The CDJ Field Office Director (FOD) may be contacted regarding case status after the 10 month processing time has elapsed and if the attempts to determine the status of the case using the cdj.uscis@dhs.gov address have been unsuccessful, or if there is an urgent need related to the case. We have experienced, well-trained personnel dedicated to answering the e-mail inquiries, and so we believe that this will not be a common occurrence. However, if this does occur, please email the CDJ FOD at cdj.uscis@dhs.gov, including "FOD" in the subject line.

If a case has been pending for more than 10 months and if you received a notice that the case has been sent to the International Adjudication Support Branch (IASB) for adjudication, you may send your inquiry to USCIS.Internationalops-LABranch@dhs.gov.

Question 7c: How/when may an applicant/attorney contact the District Director in Mexico City?

Response 7c: The District Director or Deputy District Director may be contacted when the case is outside of the 10-month processing time and the FOD has been unresponsive or there are concerns about the FOD's response. You may do so by emailing cdj.uscis@dhs.gov and including "DDD" or "DD" in the subject line.

Question 8: Does USCIS still plan to transfer cases to Anaheim, Mexico City, and other sites for adjudication of I-601 applications, and how might this process change during 2012 and beyond?

Response 8: Yes, USCIS will continue to transfer I-601 applications to the International Adjudications Support Branch in Anaheim, to the Mexico City Field Office, and to the Monterrey Field Office. We may also get assistance from other domestic USCIS Offices to adjudicate referred cases (those not approved during the vetting process) later this year. In February, we began to receive some assistance from the Miami Asylum Office, which has assisted with Form I-601 processing in prior years.

It is expected that later in the year, USCIS will begin the centralization of I-601 filings for applicants located overseas (i.e., filing with a Lockbox and adjudicating in the US). Under the proposed plan for centralization, applicants located in Mexico will have a six month period to file at Ciudad Juarez or with a Lockbox. It is expected that centralization may significantly reduce the number of I-601 applications filed in Ciudad Juarez.

I-90 Applications

Question 9: Although most practitioners and permanent residents read the form instructions and language to say that an I-90 must be filed in the United States, the relevant regulation, 8 CFR §264.5(e)(2)(i), continues to provide instructions for filing abroad at USCIS or consular locations. Are there any USCIS Offices that accept I-90s? If not, are there plans to revise 8 CFR §264.5(e)(2)(i)?

Response 9: As of November 2011, the regulations were revised. The regulations no longer provide instructions for filing abroad, and simply require the filing of Form I-90 in accordance with the form instructions. See 264.5(a). The current form instructions indicate that Form I-90 must be filed at the Phoenix Lockbox Facility. USCIS is currently analyzing the feasibility of delivering I-551s overseas in a secure manner, and then will consider whether to allow applicants to file at the Lockbox but remain overseas for biometrics and receipt of the I-551.

Suspended Activities at the USCIS Post in Yemen

Question 10: AILA Liaison learned that, despite the resumption of US visa services by the Department of State, USCIS did not resume authentication of documents or processing of DNA tests in Yemen (AILA Doc. No. 11121964).¹ Additionally, AILA was informed that written guidance would be issued on alternate methods of authenticating family relationships under such difficult circumstances, similar to those in Yemen.

Question 10a: Does USCIS International Operations processing in Yemen continue to be suspended?

Response 10a: Because there is no USCIS office in Yemen, USCIS International Operations does not actually authenticate documents or process DNA tests in Yemen. The DOS Embassy staff in Yemen has provided support to USCIS Service Center Operations (SCOPS) to verify certain facts and to collect DNA samples as needed. However, they were required to cease this assistance when the Embassy closed for visa processing; moreover, due to new mailing protocols related to mail coming to/from Yemen, processing of DNA tests in Yemen is no longer available. While the Embassy has reopened for visa processing, issues related to mail delivery have not been resolved.

Question 10b: If so, do you have an idea of when processing will resume?

Response 10b: It is our understanding that Yemen's Embassy Sana'a has reopened. However, because of external issues regarding mail delivery in and out of Yemen, DNA processing and document authentication remain unavailable. We are unable to speculate when issues regarding mail delivery in and out of Yemen will be resolved.

Question 10c: Can you offer a timeline for when the written guidance referenced above will be issued, and what will be offered in that guidance?

Response 10c: USCIS continues to actively work on the written guidance referenced above. However, it is not possible to predict when it will be ready for public distribution.

¹ *Practice Alert: Instability in Yemen Complicates USCIS International Operations Efforts*, AILA Doc. No. 11121964, www.aila.org/content/default.aspx?docid=37969.

Question 10d: Are there other USCIS overseas posts where services have been suspended? If so, please provide details on these posts.

Response 10d: At present, all Embassies in which USCIS has a presence are open and operating. DOS recently closed its Embassy in Damascus, Syria, but USCIS did not have an office there. In general, if an Embassy closes and USCIS has a presence there, USCIS would also close its operations.

Organizational Chart

Question 11: Please provide an updated organizational chart for the International Operations Division of USCIS.

Response 11: IO's updated organizational chart is below.

