



Questions and Answers

USCIS National Benefits Center – American Immigration Lawyers Association Teleconference November 30, 2012

Overview

On November 30, 2012, the USCIS National Benefits Center (NBC) hosted a teleconference with American Immigration Lawyers Association (AILA) representatives. Following are the questions posed by AILA and the responses provided by NBC.

New NBC Initiatives, Staffing Updates, Organizational Chart

Q: Please provide any updates on any new NBC initiatives that are either currently in process or are scheduled for FY2013.

A: NBC Timeline of Changes in Workload and Processes:

August 1, 2012 - NBC stopped shipping interview waiver I-485 applications to the California Service Center (CSC) and began adjudicating those cases. CSC will complete the workload that was pending as of 8/1/12.

August 15, 2012 - CSC and the Vermont Service Center began shipping stand-alone Immediate Relative I-130 petitions to NBC. NBC ships I-130's to the field bi-weekly based on jurisdiction (ZIP code). There are two exceptions to the petitions sent to the field: those that are foreign filers, and expedite requests. Once NBC is staffed for this workload in 2013, we will assume jurisdiction of the stand-alone Immediate Relative I-130 petitions.

August 15, 2012 – NBC assumed jurisdiction over all new I-90 applications. The Nebraska Service Center will complete the workload that was pending as of 8/15/12.

September 20, 2012 – NBC modified the I-485 initial evidence review process for family-based applications to provide staff for new workloads at NBC. NBC will resume the normal process when we have the staffing capacity to perform the work.

October 1, 2012 – USCIS Lockbox Operations began assigning MSC receipt numbers to stand-alone Immediate Relative I-130 petitions and shipping the petitions to NBC.

December, 2012 – NBC will expand to a second facility in Overland Park, KS. Forms I-90 and I-130 will be processed and adjudicated at this facility.

2013 (exact date TBD) - I-601A Application for Provisional Unlawful Presence Waiver will be adjudicated at NBC. NBC plans to train officers and staff in February 2013 for this workload.

USCIS has provided information to the public regarding the Workload Transfer from Service Centers to Field Operations (NBC and Field Offices) on its website. A link to the website location is provided:

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=c3c7ca7c5fed9310VgnVCM100000082ca60aRCRD&vgnnextchannel=e7801c2c9be44210VgnVCM100000082ca60aRCRD>

Q: Please provide an update on any key staffing changes that have taken place since our last engagement on May 11, 2012.

A: There have been no changes in management staff since our last teleconference with AILA in May 2012.

I-864 Initial Evidence

Q: 8 CFR §213a.2(c)(2)(i)(A) requires a sponsor to submit as initial evidence with a Form I-864, Affidavit of Support, either a photocopy of his or her complete federal income tax return, including all schedules, or an IRS-issued transcript of his or her complete federal income tax return for the most recent year. The sponsor may also include as initial evidence: letter(s) evidencing his or her current employment and income, paycheck stub(s) showing earnings for the most recent six months, financial statements, or other evidence of the sponsor's anticipated household income for the year in which the intending immigrant files the application for an immigrant visa or adjustment of status.

If the sponsor has filed an extension request for his or her most current tax return, would a copy of the extension request, current year Forms W-2/1099, and the last year's tax return be acceptable as initial evidence?

A: Yes.

Q: Page 11 of the I-864 Instructions lists what supporting documents should be submitted, under the "Check List" header and the category "For All Sponsors." The Instructions state:

A: A copy of your individual Federal income tax return, including W-2s for the most recent tax year, **or a statement and/or evidence describing why you were not required to file.** Also include a copy of each and every Form 1099, Schedule, and any other evidence of reported income. You may submit this information for the most recent three tax years, pay stub(s) from the most recent six months, and/or a letter from your employer if you believe any of these items will help you qualify.

Q: How does the NBC determine if schedules are missing?

A: As part of the I-864 review, NBC reviews the tax return for supporting documents, i.e., Schedules, W-2's, and 1099's. During NBC's review of the supporting documentation, if the necessary evidence does not appear to be present, a Request for Evidence (RFE) may be generated.

Q: How does the NBC determine if 1099s exist or if all have been submitted?

A: Please see the response above.

Q: It can take up to six weeks to receive tax transcripts from the IRS. Is a request for tax transcripts, along with an explanation, sufficient?

A: No. If an applicant wants to file before a transcript is available, then the sponsor must include a photocopy of the tax return and supporting records. Filing without the required initial evidence will delay the processing of the I-485 application and necessitate a hold on the associated ancillary applications, i.e., I-765 and I-131, until the required initial evidence is submitted.

Q: If a sponsor is not required to file with IRS should they submit a letter explaining why they don't file a tax return?

A: Yes.

Q: Does NBC receive records or information from IRS on a sponsor's taxes?

A: No. USCIS does not have communication with IRS, as an Agency, regarding tax records of sponsors.

Impact of CBP Annotations and Documentation of Arrivals

Q: On August 12, 2012, U.S. Customs and Border Protection (CBP) confirmed that it no longer places admission stamps on Form I-20 and Form DS-2019 (AILA Doc. Nos. 12082242, 12090543). What training has the NBC received on this issue in particular when looking for documentation that an applicant for adjustment has been "inspected and admitted"?

A: Changes by CBP in recent months regarding its processes have not affected how NBC conducts its review for prima facie evidence of "inspection and admission or parole." NBC continues to check for one or more of the following in its checklist review process: I-94, stamped passport page, stamped I-512, border crossing card, I-797 Approval Notice for I-102. The Field Office makes the final determination on each case as to whether an applicant was inspected and admitted or paroled.

NBC will also check available systems for evidence of inspection and admission or parole. However, lack of evidence from the applicant and our systems may result in a denial.

The following statement currently appears on the DHS website at the following web address: <http://studyinthestates.dhs.gov/?s=I-20+stamp&lang=en> .

There has been an important change in the process for international students entering the United States. As of August 10, 2012, U.S. Customs and Border Protection (CBP) no longer provides admission stamps at a United States port of entry on a Form I-20, "Certificate of Eligibility for Nonimmigrant Student Status," or Form DS-2019, "Certificate of Eligibility for Exchange Visitor (J-1)

Status,” for prospective and returning F, M and J nonimmigrants. CBP will continue, however to stamp passports and Forms I-94, “Arrival/Departure Record,” stamped upon arrival at a port of entry.

Training is an important and integral part of NBC’s efforts to ensure that officers are knowledgeable and skilled regarding Immigration law, processes and procedures. As changes occur in Immigration law, processes and procedures; NBC develops and provides appropriate training for officers and staff, as needed.

Q: As provided under the Immigration Reform and Control Act of 1986 (“IRCA”), Special Agricultural Workers (“SAWs”) were issued temporary residence cards (Form I-688a). The status authorized travel, and many individuals holding temporary residence travelled on these documents.¹ When inspected and admitted, no annotations were entered in passports, nor were Forms I-94 issued. What evidence will the NBC accept as proof of lawful entry from a person who was admitted in SAW status over the years?

A: A copy of the I-688, Temporary Residence Card, or I-688a, Employment Authorization Document specifically identified with the “SAW” or Section “210” annotation, will be accepted by NBC as prima facie proof of inspection and admission or parole in the initial evidence checklist review process. Form I-688a was issued by USCIS during pendency of the application for legalization. The Field Office makes the final determination on each case as to whether an applicant was inspected and admitted or paroled.

Denial of Adjustment of Status due to Erroneous Allegation of Outstanding Removal Orders

Q: Members have reported that adjustment of status applications have been denied where an individual’s removal proceedings have been terminated by an Immigration Judge or the Board of Immigration Appeals. For example, one member reports a denied Form I-485 even though the attorney included a copy of the Immigration Judge’s Order terminating removal proceedings with the application. In another example, the Form I-485 applicant was never in removal but had a similar name and date of birth of a person ordered removed. The examples are provided in a separate attachment. How should applicants notify the NBC that his or her removal proceedings have been terminated by the Immigration Judge?

A: If a non-arriving alien filed an I-485 application while in proceedings and NBC administratively closed the I-485, the applicant, or G-28 representative, may contact NBC by written correspondence or by calling the National Customer Service Center (NCSC), at 1-800-375-5283. The NCSC will generate an electronic referral to NBC with the details of the request. The applicant should also provide a copy of the Order from the Immigration Judge indicating that proceedings have been terminated. Note that if the removal proceedings have been

¹ See § 245a.2 Application for temporary residence. ... (3) *Employment and travel authorization upon grant of temporary resident status.* Upon the granting of an application for adjustment to temporary resident status, the service center will forward a notice of approval to the applicant at his or her last known address and to his or her qualified designated entity or representative. The applicant may appear at any Service office and, upon surrender of the previously issued Employment Authorization Document, will be issued Form I-688, Temporary Resident Card, authorizing employment and travel abroad.

administratively closed and not terminated the I-485 remains under the Immigration Judge's jurisdiction, unless the applicant is an arriving alien.

Written correspondence may be sent to the following address:

USCIS National Benefits Center
P.O. Box 648006
Lee's Summit MO 64002

Q: Would the NBC consider issuing a NOID, rather than a denial, in cases where it believes the applicant is in removal proceedings and thus ineligible to adjust status administratively?

A: In February, 2012, NBC began administratively closing, as opposed to denying for lack of jurisdiction, Forms I-485 filed at the Chicago Lockbox by non-arriving aliens who are under EOIR jurisdiction. This change aligned our process with guidance provided by both ICE and USCIS. In September 2012, NBC began forwarding these cases to the Field Offices as opposed to administratively closing the applications. This change aligns with our current I-485 modified process. Concurrently filed I-765 applications are adjudicated by NBC.

Q: What training does NBC provide its adjudicators in cases where removal proceedings may have been terminated?

A: NBC provides officers with regular training regarding EOIR jurisdictional issues as they relate to adjustment of status. Officers also receive updated policy guidance, and reference guides and training tools are available to assist officers.

Waiver of Adjustment Interviews in Certain Immediate Relative One-Stop Applications

Q: What is the procedure for determining whether to waive an adjustment interview where the family relationship is parent-child? Although some cases are forwarded to the CSC for processing without interview, other cases do undergo interview at the local office.

A: As of August 1, 2012, NBC stopped shipping I-485 cases that met the interview waiver criteria to the CSC for adjudication. We estimate that there will be approximately 30,000 interview waiver applications adjudicated annually at NBC.

The NBC's decision to waive the interview for certain cases is based on standards set at the national level. The standards include adjustment categories in which there is normally enough evidence included with the case to make an adjudicative decision without an interview. NBC takes into account these standards, as well as the specific situation of each applicant, on a case by case basis, to determine whether the interview may be waived.

The following adjustment categories are considered possible interview waiver cases:

- Unmarried minor children and stepchildren of US Citizens (IR7 and CR7)
- Parent of US Citizen (IR0)
- K1/K2 entrant— Fiancé(e) of US Citizen and children of Fiancé(e) (CF1/CF2)
- Native/Citizen of Cuba filing under 11/2/66 Act (also spouses/children) (CU6/CU7)

- Unmarried & Under 14 year old child of Lawful Permanent Resident (F27)

However, NBC does not waive the interview for applicants who file:

- With Supplement A to Form I-485, Adjustment of Status Under Section 245(i)
- With an EWI class of admission
- As part of a family pack; unless every application in the family pack meets the interview waiver criteria

USCIS guidance regarding interview waiver cases may be found in the Adjudicator's Field Manual (AFM), Chapter 23.2, General Adjustment of Status Issues, subsection (h) Interview Waivers.

The AFM may be found on the USCIS website under Laws, select Immigration Handbooks, Manuals, and Policy Guidance, select Chapter 23.2 and scroll down to section (h).

This is a link to the AFM on the USCIS website:

<http://www.uscis.gov/portal/site/uscis/menuitem.f6da51a2342135be7e9d7a10e0dc91a0/?vgnextoid=fa7e539dc4bed010VgnVCM1000000ecd190aRCRD&vgnnextchannel=fa7e539dc4bed010VgnVCM1000000ecd190aRCRD&CH=afm>

Adoption Petitions

Q: Is there a special unit within the NBC that handles Hague adoption cases and non-Hague or orphan cases?

A: Yes. We have two teams that adjudicate Hague adoption petitions, to include both Forms I-800 and I-800A, as well as the Supplements to those Forms. We also have two teams that adjudicate the non-Hague adoption Forms I-600 and I-600A. Both teams are available by calling 877-424-8374, or via e-mail at NBC.Hague@dhs.gov for Hague inquiries, or NBC.Adoptions@dhs.gov for non-Hague adoption inquiries.

Q: After the NBC reviews a Hague petition, is it standard practice for the NBC to forward the petition to the Department of State (DOS) for review prior to forwarding the case to the designated consular post? If so, which office in DOS reviews adoption petitions? Or does the USCIS Refugee, Asylum and International Operations Directorate handle the review of adoption immigration petitions?

A: If NBC grants provisional approval of a Form I-800, NBC forwards the provisionally approved petition to the National Visa Center (NVC). NVC stages the case for the visa application and interview and forwards it to the consular post that has jurisdiction to adjudicate the immigrant visa petition. USCIS Refugee, Asylum and International Operations (RAIO) will not review the Hague-based petitions after NBC grants provisional approval.

Information about the NVC's processes is available on the Department of State's website:

http://travel.state.gov/visa/immigrants/types/types_1309.html

If the consular officer issues the Article 5 notice, and then receives notice from the country of origin that a Hague adoption is completed, then, as a delegate of USCIS, the consular officer grants final approval of the Form I-800 in conjunction with approval of the visa application. See 8 CFR 204.313(h)(2). The consular officer, however, cannot deny a Form I-800. If the Form I-800 is “not clearly approvable,” the consular officer must return the Form I-800 to USCIS for final adjudication.

Deferred Action for Childhood Arrivals (DACA)

Q: What is the role of the NBC in the adjudication of DACA applications (Form I-821D) and the related Application for Employment Authorization (Form I-765)? If you are adjudicating cases, please provide statistics on volume of cases received/pending/approved/denied.

A: NBC does not adjudicate Requests for Consideration of Deferred Action for Childhood Arrivals (Form I-821D) and related Forms I-765, Application for Employment Authorization, filed by persons seeking to have their case deferred by USCIS pursuant to Secretary Napolitano’s memorandum dated June 15, 2012. NBC does, however, adjudicate Forms I-765 filed by applicants whose case was deferred by ICE pursuant to the Secretary’s memorandum.

Processing statistics for cases filed according to the Secretary’s memo may be found on the USCIS website at:

<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=1b52d725f5501310VgnVCM100000082ca60aRCRD&vgnnextchannel=1b52d725f5501310VgnVCM100000082ca60aRCRD>.

Adam Walsh Act

Q: The Board of Immigration Appeals has issued several identical opinions (sample attached) on Adam-Walsh Act cases remanding cases to the Director. We seek some clarification on the processing of such cases. Given the BIA decision, is the NBC processing Adam-Walsh cases or holding them in abeyance awaiting guidance from USCIS headquarters or a federal court or precedent administrative decision?

A: Adam Walsh Act (AWA) cases that were remanded to NBC by the BIA remain pending. USCIS has submitted a filing to the BIA setting out its current positions on the points raised in the remands. We look forward to the BIA’s decision in that case, which we anticipate will result in further guidance on these issues.

Q: Are these cases processed at Service Center level, held at Service Center level until there is guidance, or placed in queue for scheduling at local offices?

A: AWA cases that were remanded by the BIA remain pending. But NBC and VSC continue to process incoming AWA cases. NBC will forward cases to local offices where the petitioner’s response to an RFE, or RFE/NOID, proves one of the following:

- 1) the petitioner was not convicted of a specified offense
- 2) the crime for which the petitioner was convicted was not a specified offense, or
- 3) the petitioner appears to pose no risk to the safety or well-being of the beneficiary.

Since VSC adjudicates stand-alone I-130 petitions rather than petitions filed concurrently with an application for adjustment of status, VSC typically adjudicates the I-130 (to completion) and does not forward cases to local offices for adjudication.

Q: With respect to demonstrating that the petitioner is not a risk to the safety or well-being of the principal beneficiary or a derivative beneficiary, what legal standard does the NBC apply when exercising discretion -- "preponderance of the evidence" or "beyond a reasonable doubt"? What training is given to officers on the difference between these legal standards?

A: Officers at NBC apply the legal standard "beyond any reasonable doubt" as outlined in the February 8, 2007, memorandum entitled "Guidance for Adjudication of Family-Based Petitions and I-129F Petition for Alien Fiancé(e) under the Adam Walsh Child Protection and Safety Act of 2006."

Q: We have received reports that an opinion letter from a psychotherapist letters is not sufficient evidence that the petitioner is not a risk to the safety or well-being of the principal beneficiary or a derivative beneficiary unless the psychotherapist has performed the STATIC-99 test. We understand that the STATIC-99 test is supposed to predict likely rate of recidivism. But even a zero score has at least a 1.4% chance of recidivism, meaning there is no outcome on the STATIC-99 test that can achieve what the statute requires ("no risk"). What alternative metrics or evidence can a petitioner provide to establish he/she is not a risk to the safety or well-being of the principal beneficiary or a derivative beneficiary?

A: The evidence in the record is considered in its totality. Any letter submitted from a psychotherapist is considered with the whole sum of evidence in support of an individual case. In the RFE/NOID, USCIS suggests types of evidence that the petitioner may submit to establish they pose no risk to the safety or well-being of the beneficiary(ies). Because each AWA case involves different facts and circumstances there is no particular type of evidence that a petitioner can provide to establish they pose no risk to the safety or well-being of the beneficiary(ies).

Forms G-28 – Recognition of Representation

Q: We are receiving reports from attorneys that a filed Form G-28 *Notice of Entry of Appearance as Attorney* is not being recognized and attorneys are not receiving notices such as Fee Receipts or copies of Biometric Appointments. AILA has posted a practice pointer to remind members how to submit a Form G-28 (AILA InfoNet Doc. No. 08090469). What can attorneys do to help ensure that the attorney is recognized in the petition/application filing?

A: Attorneys should ensure the G-28 is signed by both the attorney and the applicant or petitioner and contains a complete mailing address for the attorney (including street name, number, city, state and zip code.) The applicant or petitioner's name listed on the G-28 should match what is printed on the application/petition. The representative may not list both the applicant and petitioner on the same G-28 form.

Top three reasons a G-28 is deemed not valid:

- 1) Missing signature of applicant/petitioner and/or attorney
- 2) Missing attorney address, street name and number, city state and zip
- 3) Name of petitioner/applicant on G-28 does not match name on form being filed.

Q: Is printing the Form G-28 on light blue paper helpful to identify that a G-28 has been submitted? Or does using light blue paper create problems for a legible scan?

A: The easiest way to ensure the G-28 is identified is to place it at or near the top of the documents that are being submitted. The best color for scanning purposes is white, but if an alternate color is going to be used it is best to use lighter colors (in this case light blue).

Q: Should the Form G-28 be signed in blue ink to help identify that is an original signature?

A: The signature should be in black ink.

Q: Would it be helpful to NBC for the attorney to staple the filing fee payment to the G-28 to make the G-28 more visible?

A: The attorney may staple the payment to the G-28 to ensure the G-28 is identified. However, stapling the payment to the G-28 will not impact the Lockbox's ability to identify the G-28.

Q: We understand that an attorney can resubmit a Form G-28 to your office with a copy of the underlying petition/application receipt to: NBC, PO Box 648000, Lee's Summit, MO 64002. Is this address still correct?

A: The correct address is:

USCIS National Benefits Center
P.O. Box 648006
Lee's Summit MO 64002

Tips for Filing Forms with USCIS are located at the following link:

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=880264337c77e210VgnVCM100000082ca60aRCRD&vgnnextchannel=db029c7755cb9010VgnVCM10000045f3d6a1RCRD>

Q: We understand that 8 CFR 292.1(a)(1) states: "*Attorneys in the US.* Any attorney as defined in 1.1(f) of this chapter." 8 CFR 1.1(f) states that "The term attorney means any person who is eligible to practice law in, and is a member in good standing of the bar of, the highest court of any State, possession, territory or Commonwealth of the US or of DC, and is not suspended or disbarred."

If the attorney indicates in Part 2 of the G-28 that he/she is an attorney in good standing in a State/Possession/Territory/Commonwealth of the U.S. or District of Columbia but lists a firm address in a foreign country, will the attorney residing abroad be recognized and the receipt/communications from USCIS be sent abroad?

A: Yes, provided that the attorney completed the G-28 with their full address and the name of the applicant or petitioner on the G-28 matches the name on the filed application or petition.

Q: If a foreign licensed attorney submits a properly completed and executed Form G-28I for a petition on behalf of a Petitioner residing in a foreign country (such as a Form I-130, Petition for

an Alien Relative), will USCIS and the Lockbox facility in Chicago recognize the foreign attorney and send the receipt/communications from USCIS to the G-28I attorney abroad?

A: The purpose of Form G-28I is to provide notice that an attorney admitted to practice of the law in a country other than the United States seeks to appear before DHS in a matter outside the geographical confines of the United States. The Lockbox does not receipt in applications or petitions which are sent to offices outside the United States. Therefore, this form will not be accepted with applications or petitions that are filed with the Lockbox.

Q: If the petitioner of the Form I-130 resides abroad are receipt notices (or other notices) being sent to the Petitioners?

A: Yes. If the attorney representative or petitioner/applicant does not receive a Receipt Notice on a newly filed petition or application, the individual may contact USCIS via the Lockbox's email account at lockboxsupport@uscis.dhs.gov.