



Questions and Answers

USCIS Meeting with the American Immigration Lawyers Association (AILA)

October 23, 2013

Overview

On October 23, 2013, the USCIS Field Operations Directorate hosted an engagement with AILA representatives. USCIS addressed questions related to Customer Identity Verification (CIV), I-94 automation, Form I-601A, and same-sex marriage adjudications. The information below provides a review of the questions solicited by AILA and the responses provided by USCIS.

Questions and Answers

1. Customer Identity Verification (CIV) Implementation at USCIS Field Offices

On September 9, 2013, USCIS began implementing a new Customer Identity Verification (CIV) process at its field offices. Customers appearing for interviews or receiving evidence of an immigration benefit (such as an I-551 stamp, emergency advance parole document, etc.) are now asked to submit biometric data (fingerprints and photographs), so that USCIS can verify the customer's identity and thus, enhance the integrity of the immigration system and combat identity fraud. Though a technical issue delayed the implementation of CIV in May 2013, the issue has been resolved and the CIV tool is being phased in between September 9, 2013 and October 21, 2013 at USCIS field offices throughout the nation.¹

- a. Please provide an update on the implementation of CIV, including an assessment of the success of the initiative thus far.

USCIS Response: On September 9, 2013, USCIS began requiring applicants for naturalization to submit biometric data, specifically fingerprints and photographs, when appearing at USCIS offices for interviews. This initiative will be expanded to additional form types in the coming months. To date all naturalization applicants have been subject to CIV since its implementation.

¹ "USCIS Implements Customer Identity Verification at Field Offices," (Sept. 16, 2013), *published on* AILA InfoNet at Doc. No. [13090651](#) (posted 9/6/13).

- b. Initial reports indicated that a number of field offices were experiencing significant delays as a result of that the CIV roll-out. Do some field offices continue to experience delays and if so, what steps are being taken to minimize such delays?

USCIS Response: We have received reports of delays from some Field Offices; however, USCIS is continually monitoring the implementation of CIV and troubleshooting any problems that arise.

- c. What can AILA members and their clients do to help facilitate the CIV process?

USCIS Response: We appreciate your willingness to facilitate the CIV process; however, there is nothing that applicants and/or their attorneys or accredited representatives need to do at this time.

2. Same-Sex Marriage Adjudications at USCIS Field Offices

We commend USCIS Field Operations for the proactive role it has taken in implementing the Supreme Court’s decision in *United States v. Windsor*, 570 U.S. ____ (2013) (Docket No. 12-307). Specifically, we welcome the process by which AILA members and their clients can reopen same-sex I-130 petitions that were denied prior to the decision in *Windsor*. Additionally, we thank USCIS for recognizing that the validity of a same-sex marriage is based on the law of the place of celebration. We also recognize and appreciate USCIS’s efforts to ensure consistency in the adjudication of same-sex marriages nationwide. Along these lines we have the following questions:

USCIS Response: USCIS appreciates AILA’s recognition of USCIS’s efforts in implementing the *Windsor* decision. We also appreciate AILA’s questions, which raise unique issues relating to the administration of immigration benefits to same-sex spouses now that Section 3 of DOMA has been struck down. At this time, we are unable to provide answers to questions c and d. We are working to develop additional guidance to supplement that which we have already published, and expect to answer these and other important DOMA-related questions in the near future.

To ensure that potential requestors and stakeholder receive access to all USCIS updates and information, we will provide updates on this subject via our website. Please check www.uscis.gov/samesexmarriages for updates and information. To receive email notices when web updates are made, click the “Get Updates for This Page” link on the lower right side page.

Our responses to AILA’s remaining questions are set forth below.

- a. Please confirm that all field offices are adjudicating same-sex marriage cases and not holding them in abeyance pending further guidance.

USCIS Response: USCIS is not holding same-sex cases pending further guidance.

- b. Have field office adjudicators received sensitivity training or other specialized training on the adjudication of applications for immigration benefits based on same-sex marriages? If so, please describe the training process.

USCIS Response: USCIS routinely decides immigration cases that involve a variety of unique situations and backgrounds. As a result, our officers are trained to be sensitive to everyone's individual situation. USCIS is currently developing materials to specifically train our officers about recent changes that affect the processing of marriage-based petitions.

- c. Will all USCIS field officers be trained in and responsible for adjudicating same-sex applications or does each field office have a team or designated person to handle these cases? If all adjudicators handle these cases, does each field office have a designated officer who is responsible for troubleshooting issues that might arise?

USCIS Response: See initial response, above

- d. Some applicants in same-sex marriages may have not revealed their sexual orientation to their families or employers. How are USCIS field office adjudicators trained to proceed if they feel the need to contact an employer or family member to confirm information disclosed in an application?

USCIS Response: See initial response, above

3. I-94 Automation

USCIS announced on April 30, 2013, that U.S. Customs and Border Protection (CBP) started implementation of the Form I-94 automation at all U.S. air and sea ports of entry.² In this same announcement, USCIS indicated that it would accept the electronic Form I-94 in paper format obtained from CBP's website (www.cbp.gov/I94). The Service noted that "this document is the equivalent of the paper versions of Form I-94 issued by CBP and USCIS. In lieu of submitting the electronic Form I-94 in paper format, USCIS will also accept photocopies of the passport pages that contain the individual's biographical information, visa and admission stamp."

AILA members have reported instances where clients and unrepresented foreign nationals are unable to obtain a paper copy of the Form I-94 from CBP's website, even after confirming that the data was entered correctly in the CBP system. People having trouble retrieving their I-94s are advised to try the following techniques:

² "CBP Begins Implementation of Form I-94 Automation," *published on AILA InfoNet at Doc. No. [13043055](#) (posted 4/30/13).*

- Enter the first and middle name in the *First Name* field;
- Switch the order of the first and last names;
- Enter multiple first names or multiple last names without spaces;
- Check for multiple passport numbers;
- Refrain from entering the year if the year is included in the passport number;
- Check and compare the designated classification on the visa with the designated classification on the admission stamp;
- Call or visit a CBP Deferred Inspection office for assistance in obtaining a paper copy of Form I-94.

Please advise whether additional guidance has been or will be issued to USCIS field offices to supplement the April 30, 2013 USCIS announcement concerning the automation of Form I-94. Are there any instances where a photocopy of the passport pages that contain the individual's biographical information, visa, and admission stamp will not be acceptable as an alternative to a print-out of the I-94 information from the CBP website?

USCIS Response (covered at 10/23/13 AILA Executive Committee Meeting): USCIS does not anticipate issuing additional guidance to supplement the April 30, 2013 guidance. However, USCIS is in the process of revising the form instructions of benefit request forms (e.g., Forms I-821 and I-129) to include more information regarding Form I-94 in light of CBP's Form I-94 automation. A photocopy of the biographical page(s) of the passport, the visa (if applicable), and the admission stamp would be acceptable in most cases as an alternative to a print-out of the I-94 information from the CBP website. USCIS may request additional evidence if necessary.

4. I-601A Provisional Waivers: Transfer of Approved I-130 Petitions to the National Visa Center (NVC)

The I-601A provisional waiver offers qualifying spouses of U.S. citizens the opportunity to obtain a provisional waiver of unlawful presence in the United States prior to obtaining an immigrant visa at a U.S. consular office abroad. In order for the process to work, coordination between USCIS, Immigration and Customs Enforcement (ICE) and the Department of State (DOS) is critical. We acknowledge the logistical difficulties involved in implementing the I-601A program and appreciate the agencies efforts to resolve them.

One obstacle that has presented itself involves the timely transfer of approved I-130 petitions to the National Visa Center (NVC), which is necessary to start the I-601A process. It has come to our attention that there are delays, sometimes significant delays, in transferring approved I-130 petitions from the USCIS field office to the NVC, particularly for individuals in removal proceedings.

General Questions about the I-130 Transfer Process

- a. When a USCIS field office transfers an I-130 petition to the NVC for visa processing, what documents are transferred to the NVC (i.e. just the I-130 petition, the entire A file, etc.)?

USCIS Response: USCIS will send the original petition and the supporting documentation submitted with the petition to the NVC.

- b. Do USCIS field offices transfer the original approved I-130 petition to the NVC or a copy of the approved I-130 petition?

USCIS Response: USCIS sends the original, approved I-130 petition.

Impact of Indicating a U.S. Address for the Beneficiary

AILA members are reporting delays in transferring approved I-130 petitions to the NVC when a U.S. address is listed for the beneficiary (which would be appropriate if a Form I-601A will be filed), even if immigrant visa processing at a consulate is indicated in response to Question #22 on page two of the I-130.

- c. Please confirm that USCIS field offices look at the answer to Question #22 on page two of the I-130 petition to determine whether the I-130 should be designated for immigrant visa processing at a consular office abroad, and thus, sent to the NVC for immigrant visa processing after approval.

USCIS Response: Yes, USCIS Field Offices use the response in Question 22 of the Form I-130, Petition for Alien Relative, to determine if the approved petition should be sent to the NVC upon adjudication.

- d. Please confirm that USCIS field offices do not make a determination about whether to designate the I-130 for adjustment of status or immigrant visa processing based on the beneficiary's address listed on the I-130 Form.

USCIS Response: USCIS will not make a determination as to whether the beneficiary of the Form I-130 will apply for adjustment of status based on the beneficiary's address listed on the petition. When Form I-130 is properly completed, we will use the response to Question 22 on the Form I-130 to determine if the beneficiary will apply for adjustment of status or consular process. If you have examples where this is not happening, please bring them to our attention.

- e. Please confirm that where a U.S. address for the beneficiary is indicated on Form I-130 but Question #22 indicates that the beneficiary will apply for an immigrant visa at a U.S. consulate, the beneficiary is not required to file an I-824 to have the file transferred to the NVC.

USCIS Response: A beneficiary should not need to file a Form I-824, Application on an Approved Application or Petition, to request consular processing if they had previously indicated on Question 22 of the Form I-130 his or her intention to consular process.

Both Adjustment of Status and Immigrant Visa Processing Indicated on the I-130 Form

Another reason for the delay in transferring approved I-130 petitions to the NVC is that *pro se* applicants inadvertently indicated, in response to Question #22, that the beneficiary would be applying for both adjustment of status and immigrant visa processing.

- f. Would USCIS consider changing its policy or issuing a clarification on the USCIS website that in cases where a *pro se* petitioner indicated that the beneficiary would apply for both adjustment of status and immigrant visa processing on the I-130 Form, an I-824 is not required in order to have the case transferred to the NVC? Adopting this more lenient policy would ensure that the I-601A process is implemented in the way it was intended, and would avoid unnecessary and costly delays.

USCIS Response: We will take this suggestion into consideration.

Incorrect I-130 Approval Notices for Cases Adjudicated by the USCIS Field Offices

We have also received a number of reports that I-130 approval notices issued by the National Benefits Center (NBC) contain language stating that the case is being held for adjustment of status, when in fact, the I-130 form indicates immigrant visa processing and the case should be transferred to the NVC.

- g. It appears that a data entry error by field office adjudicators may be the cause of the incorrect approval letters. If this is the case, would USCIS remind field offices to double check whether the case should be held for adjustment of status or transferred to the NVC before generating the approval notice?

USCIS Response: Yes, we will remind Field Offices. Also, if you have examples where this is happening, please bring them to the attention of local management.

I-130 Transfers to the NVC for Cases in Removal Proceedings

We have also received numerous reports from USCIS field offices across the nation that there are significant delays in transferring approved I-130 petitions to the NVC in cases where the beneficiary is in removal proceedings. While some of these delays are due to an incorrectly completed I-130 (indicating adjustment of status instead of immigrant visa processing), many others are delayed even where immigrant visa processing is properly indicated on the I-130 Form.

Though procedures may vary, we understand that the process in most jurisdictions involves the transfer of the approved I-130 petition, along with the A file, from the USCIS field office to the local ICE Chief Counsel's Office. At the conclusion of proceedings, the file is transferred back to the USCIS field office where it is then sent to the NVC. We understand that this process is necessary because (1) both ICE and the NVC require an original approved I-130; and (2) the I-130 petition can't be separated from the rest of the file.

- h. Would USCIS Field Operations coordinate with ICE and DOS to develop a faster and simpler file transfer process? For instance, if the primary issue is that ICE and DOS both require an original approval notice, could the USCIS field office generate two original I-130 approval notices; one to send to the NVC and the other to stay with the A file in removal proceedings?

USCIS Response: USCIS will transfer the Form I-130 to the NVC if the petitioner requested consular processing upon the completion of proceedings. While most transfers from ICE to USCIS to the NVC are timely, the issue arises when proceedings are completed and the file is returned to the National Records Center (NRC), instead of the Field Office. In these situations, the attorney or applicant should notify the Field Office that proceedings have been terminated or administratively closed, and that there is an approved Form I-130 and a request for consular processing. USCIS will request the file from the NRC and forward the petition to the NVC. If consular processing was not initially requested, the applicant must file Form I-824, Application for Action on an Approved Application or Petition.

Generating duplicate approval notices would not likely achieve the intended goal implied in the question. Both ICE and the NVC need the full, original petition, thus two approval notices would not improve the transfer time of the Form I-130 petition. Also, we generally do not include a copy of the approval notice that is sent to the petitioner in the file—there is no need to as we have the original petition that has been stamped with an approval stamp and the approval is also reflected in our systems.

5. Interview Waiver Eligible Adjustment Cases

In liaison discussions with AILA, the National Benefits Center (NBC) indicated that it recently started to send interview waiver eligible adjustment applications to the appropriate USCIS field office based on the zip code of the adjustment applicant.³ We understand that the field office will determine if the cases are eligible for an interview waiver. The stated purpose of the transfer is to reduce the backlog of these cases.

- a. Once received at the field office, how are these cases processed?

USCIS Response: These cases are integrated into the ISOs' workload and are adjudicated in a timely manner.

³ NBC Practice Pointer: Waiver of Adjustment Interviews for Certain Family-Based Petitions, *published on AILA InfoNet at Doc. No. [13042251](#) (posted 7/24/13).*

- b. Are all field offices accepting and adjudicating interview waiver cases? If not, please provide a list of field offices that are handling these cases and explain how cases from non-participating jurisdictions will be processed.

USCIS Response: Yes, all offices are handling these cases.

- c. What is the USCIS processing time goal for interview waiver cases? Is it the same for all field offices or does it vary?

USCIS Response: Processing time goals are the same as other Form I-485s.

- d. What is the time frame for transferring both backlogged and newly received cases to the field offices?

USCIS Response: Cases are currently being transferred to the field and will continue to be transferred. The longer pending cases will be worked before more recently filed interview waiver cases.

- e. What challenges have field offices experienced with the processing of these cases so far?

USCIS Response: The Field Offices have not reported challenges with processing these cases.

- f. What is the future of field office processing of interview waiver eligible cases? Is this a temporary or permanent change in processing?

USCIS Response: There are no immediate plans to change how these cases are currently being processed.

6. Update on Stand-Alone I-130 Processing by USCIS Field Offices

Please provide an update on the processing of stand-alone I-130 petitions by USCIS field offices.

- a. Are field offices still receiving and adjudicating stand-alone I-130s?

USCIS Response: There are still a small number of stand-alone Immediate Relative I-130 petitions in the Field Offices for completion. However, the Field Offices will not receive any additional stand-alone Immediate Relative I-130s for adjudication. USCIS provided information to the public regarding this issue on October 21, 2013.

- b. If so, when will the NBC start adjudicating these cases again?

USCIS Response: On October 21, 2013, USCIS provided information to the public regarding the workload transfer of stand-alone Immediate Relative I-130s from the NBC to certain Service Centers. The NBC stand-alone I-130 casework is being transferred to the Nebraska, Texas and California Service Centers to balance overall workload. If a customer's petition was transferred, he or she will receive a notice of the transfer indicating when the case was moved and to which Service Center. The I-130 receipt number will not change, and the transfer will not further delay the processing of the case.

- c. Are there plans to transfer additional stand-alone I-130 petitions or other types of applications or petitions to USCIS field offices for adjudication?

USCIS Response: There are no plans to transfer additional standalone Immediate Relative Form I-130s or other form types to the field for adjudication beyond the forms that are currently adjudicated in the field (e.g., concurrently filed Form I-130s and Form I-485s, Form N-400, etc.).

7. I-130 Transfers to the BIA

At our May 20, 2011 meeting, AILA and USCIS Field Operations engaged in a dialogue about the process and procedures for transferring I-130 appeals to the Board of Immigration Appeals (BIA).⁴ USCIS stated that it does not issue briefing schedules in I-130 appeal cases and that denial notices inform the petitioner that the brief must be received no later than 30 days from the date of the appeal. USCIS stated that field offices do not wait longer than 30 days for the brief to consider the appeal. If it is determined that the appeal does not overcome the grounds for denial, the field office prepares a Record of Proceeding (ROP) which is forwarded to the Office of the Chief Counsel located in the same district where the appeal was filed. Counsel reviews the ROP, prepares arguments on behalf of the government, and forwards the file to the BIA. We continue to hear reports of lengthy delays between the time the appeal is filed and the time the file is transferred to the BIA.

- a. What is the average time frame for the transfer of the file to the BIA from the time the appeal is received at the field office?

USCIS Response: Neither the INA nor relevant regulations state an explicit timeframe for the submission of the ROP to the BIA. The regulation states that the ROP "shall be forwarded to the Board by the Service officer promptly upon receipt of the briefs of the parties, or expiration of the time allowed for the submission of such briefs." 8 CFR 1003.5(b) USCIS, however, endeavors to submit the briefs and ROP to the BIA as quickly as possible after receipt of the petitioner's brief.

- b. What factors, at various stages of the process, might cause a significant delay in the transfer of the I-130 appeal file to the BIA?

⁴ See AILA/USCIS Field Operations Liaison Meeting (May 20, 2011), *published on* AILA InfoNet at Doc. No. [11070861](#) (posted 7/8/11).

USCIS Response: It depends on the case. Some cases are more complex than others and require additional time to review and prepare submission to the BIA.

- c. Is the procedure described above the standard operating procedure for I-130 appeals at all USCIS field offices?

USCIS Response: Yes.

- d. If not, would USCIS consider suggestions for implementing a standard procedure based on the processes used by some USCIS field offices?

USCIS Response: Not applicable.

8. Guidance on *Matter of Arrabally/Yerrabally* Cases

Has guidance been given to USCIS field offices regarding the application of *Matter of Arrabally/Yerrabally*, 25 I&N Dec. 771 (BIA 2011) when adjudicating adjustment of status applications?

USCIS Response: USCIS has drafted guidance on procedures for adjusting applicants pursuant to *Matter of Arrabally/Yerrabally*. This guidance is going through the internal review process and will be released upon completion of this review and approval from the USCIS Director.