



# Questions and Answers

## USCIS National Benefits Center – Florida Bar Association Liaison Teleconference March 21, 2013

### Overview

On March 21, 2013, the USCIS National Benefits Center (NBC) hosted a teleconference with the Florida (FL) Bar Association attorney liaisons. Following are the questions posed by FL Bar and the responses provided by NBC.

### Staffing Updates

**Question 1:** Please provide an update on any key staffing changes that have taken place since the last engagement on November 30, 2012. At that time there were no changes.

**Response:** Staffing at NBC will increase over this fiscal year to approximately 960 Federal employees and 1,300 contract employees at both NBC facilities. Division 7 and 8 will be located at the Kansas facility. The Kansas facility will open in April 2013 for Federal employees working I-90 applications. NBC anticipates beginning adjudication of the I-130 petitions in September 2013 at the Kansas facility.

### Cuban Adjustment Cases

**Question 2:** What is the current processing time for Cuban Adjustment cases? The last information we received was that processing was taking between six to eight months. How long should we wait to make an inquiry if no action has been taken? If the case is transferred to the local office, is the NBC sending notice to the attorney's office?

**Response:** NBC discontinued sending the Cuban Adjustment of Status (AOS) cases to the California Service Center on August 1, 2012, and began adjudicating them on August 15, 2012. We make every effort to adjudicate the oldest cases first, but it is possible that some cases may have reached the six-month mark. At this time, we recommended that you wait until six to eight months have lapsed before making an inquiry with the National Customer Service Center. If the case is transferred to the local office for an interview, an Interview Notice will be sent to the applicant and attorney when there is a valid G-28 in the file.

**Question 3:** On Cuban Adjustment cases, if a derivative spouse's adjustment application is pending and the spouse through who he/she will derive eligibility for Cuban Adjustment becomes a U.S. citizen, will NBC accept an I-130 petition and interfile it with the I-485 application? Or will a new I-485 application have to be filed (and fees paid) with NBC?

**Response:** The Adjudicators Field Manual (AFM), Section 23.2(1)(2), Transferring an Adjustment of Status Application from One Underlying Basis to Another, indicates that USCIS may, upon written request by the applicant, transfer an adjustment of status application from one underlying basis to another.

In order to transfer an adjustment application from one eligibility basis to another, there must be no break in the continuity of the underlying eligibility for adjustment prior to the submission of the written conversion request. If the applicant does not maintain eligibility pursuant to the original basis for filing up until the point the written conversion request is made, USCIS cannot accommodate their request. Additionally, the applicant must be prima facie eligible for adjustment on the second basis at the time of the request. In other words, transfer only works if, at the same time, the individual is eligible on either basis.

The spouse or child of a Cuban Adjustment Act (CAA) grantee becomes ineligible for derivative CAA adjustment if the principal naturalizes while the derivative application is pending. There would be no basis, therefore, to transfer the CAA adjustment to an IR adjustment, based on a Form I-130 filed after the principal naturalizes. The individual would not be eligible on both grounds at the same time. In this situation, it would be necessary to file a new Form I-485, with the standard filing fees.

It may be that the principal filed an F2A Form I-130 while still an LPR. If the priority date becomes current while the CAA adjustment is pending, the spouse or child could ask to transfer the application from the CAA basis to adjustment under section 245 as an F2A. In this situation, adjustment on both grounds could exist at the same time. Once the adjustment was transferred to the F2A basis, the principal's later naturalization would no longer end the eligibility of the spouse or child for adjustment.

#### **Executive Office for Immigration Review (EOIR) Cases**

**Question 4:** When removal cases are terminated for USCIS family based adjustment of status, how can we assist in having the cases routed to NBC for adjustment and not to NRC?

**Response:** When removal cases are terminated with a pending I-485 Family-Based Adjustment application the ICE Chief Counsel's office sends the Alien file (A file) to the ICE Enforcement and Removal Operations (ERO) office. ICE ERO should forward the A file to the Field Office for interview and adjudication.

**Question 5:** Some members have reported that applications are occasionally returned in error. For example if there is no fee paid when in fact the case was previously fee'd in through TSC because the applicant was in removal proceedings. In these cases is there anything members can do to highlight or flag these cases so that they are not automatically rejected by the Lockbox? This question refers to both I-485 and I-765 filings.

**Response:** If an applicant filed an I-485 application with the Texas Service Center (TSC) during removal proceedings and paid the correct fee, the applicant would not have to file a new application with USCIS after proceedings are terminated. As stated in the response to number 4 above, ICE ERO should forward the A file to the Field Office for interview and adjudication of the pending I-485 application when removal proceedings are terminated.

Additionally, if removal proceedings are terminated, and the applicant filed an I-485 application with the TSC during proceedings and paid the correct bundle fee, the applicant may file an I-765 application with the Lockbox with no fee provided it is an *initial* or *renewal* filing. A copy of the TSC Receipt Notice for the I-485 application should be submitted with the I-765 application as evidence of the pending I-485 application and payment of bundle fee. If there is no proof that the correct bundle fee has ever been paid, then the \$380.00 fee is required or a fee waiver filed with the I-765 filing. A copy of a Receipt Notice for the EOIR-42 is not sufficient. The applicant needs to include evidence of a filed I-485 application.

As a reminder, a fee is always required to file an I-765 application to *replace* an Employment Authorization Document.

If you have questions about applications that have been processed by the Lockbox, you may send an email to [lockboxsupport@uscis.dhs.gov](mailto:lockboxsupport@uscis.dhs.gov).

**Question 6:** What is the current status of NBC taking the I-485 workload of applications that Texas Service Center currently receives per the USCIS Pre-Order Instructions for applicants in removal proceedings? Is a date to transfer this processing set and, if so, when will we be informed?

**Response:** NBC has no plans, at the current time, to take this workload.

### Form I-864 Supporting Evidence

**Question 7:** What is the policy on using the immigrant's assets on an I-864, if the immigrant does not have lawful employment authorization? In some cases an immigrant may have bank accounts or own homes or have other assets in the US.

**Response:** The sponsor may rely on the intending immigrant's income only if the income is from lawful employment or another lawful source. See 8 CFR 213a.1 (definition of household income). The Regulation does not include a similar requirement with respect to the sponsored immigrant's assets. Cf. 8 CFR 213a.2(c)(iv)(B). Thus, the sponsored immigrant does not have to show affirmatively that he or she had employment authorization in order to rely on his or her own assets.

### Interview Waiver Cases

**Question 8:** What is the timeframe in which the NBC is currently adjudicating interview waiver "immediate relative" cases? The processing times for I-485s are not posted on the National Benefits Processing Times.

**Response:** As stated in number 2 above, the processing time may reach six to eight months in some cases.

### Processing of I-864

**Question 9:** Several years ago, the NBC took on the responsibility of adjudicating I-864 affidavits. Can you confirm that an I-485 interview will not be scheduled without a favorable and final NBC adjudication of the I-864 so that there is no reason to bring supplemental financial documentation to the I-485 interview?

**Response:** In September 2012, NBC temporarily modified the I-485 initial evidence review process due to staffing levels and the transition of new work products to NBC. Currently, when NBC is not able to validate the I-864 we will send an RFE for the missing initial evidence, as usual. However, if NBC is unable to validate the I-864 based on the evidence submitted in the RFE response, NBC will produce a memo to the file to inform the Field Office of the issue and the case will be scheduled for interview. The Field is then responsible for validating the I-864 at the time of interview or issuing another RFE. In these instances, it may be prudent to bring supplemental financial documentation to the interview.

NBC plans to reinstitute validation of the I-864 as part of the pre-interview process at the end of Fiscal Year 2013 when we have met the current staffing allocation for this office.