U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
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U.S. Citizenship and Immigration Services

Questions and Answers

USCIS International Operations – American Immigration Lawyers Association (AILA) Meeting

November 19, 2010

Overview

On November 19, 2010, the USCIS International Operations Division hosted an engagement with AILA representatives. USCIS discussed issues related to the adjudication and processing of refugee/asylee applications, international adoptions, waivers of inadmissibility, and humanitarian parole. The information below provides a review of the questions solicited by AILA and the responses provided by USCIS.

General Issues

Question 1: At our last meeting in December 2009, RAIO announced that its new case management system (CAMINO) would be up and running by June 2010. The October 2010 Response to Recommendation Regarding Processing of Waivers of Inadmissibility states that the system was released for use by all International Operations staff on August 16, 2010. How has the case management system impacted information sharing, processing efficiency, processing times, etc.? Can the International Operations Division give us an update on when online case status might be implemented?

Response: The International Operations Division has been using CAMINO to track all overseas adjudications for applications that arrived at an overseas USCIS office on or after August 1, 2010, or were adjudicated after that date. CAMINO is a web-based integrated system that for the first time combines all overseas cases in one system. As with any new system, we have identified some systemic concerns that are being addressed, particularly with respect to reporting functions. We expect a second release of the system in early January, which will correct reporting errors. Once we have full confidence in the data, we will develop reports on processing times by field office, which we will post to the USCIS website. Our aim is to develop the capability to provide access to case status on-line in a subsequent release of CAMINO.

Question 2: At our last meeting in December 2009, RAIO stated that an "International Operations" page was being developed for the USCIS website that would contain SOPs, initiatives, fact sheets, and information on I-601 processing. We have seen the new International Operations page but not the SOPs or other documents posted. Can we get an update on when we might see these changes?

Response: We were pleased to launch a complete overhaul of the International Operations Division public face on the Internet and hope it provides useful information to the public about our overseas operations. We are still on track to publish operating procedures and other guidance as they are finalized. We removed the Form I-601 standard operating procedure because it contained outdated information and the revised version is in the clearance process. As operating guidance documents are finalized, they will be posted on the Internet. We welcome other suggestions for the type of information that should be posted.

Refugee/Asylee Processing

Question 3: At our last meeting in December 2009, RAIO stated that it was in the process of developing an SOP on following-to-join refugees and asylees to standardize document procedures and bring about greater efficiency. Has this SOP been finalized?

Response: USCIS has issued draft guidance to overseas field offices, but it has not yet been finalized. The USCIS response to the crisis in Haiti significantly delayed our progress during FY 2010 on completing this guidance. However, we hope to finalize it in the near term and will make it available to the public at that time.

Question 4: As the authority to issue a V92/93 after an I-730 petition grant is delegated by DHS to DOS, we presume that if the V92/93 is not issued, that the USCIS sub-offices have the authority to review the non-issuance, prior to the I-730 being returned to the U.S. for revocation. This would be similar to an I-130 petition filed at post being delegated to DOS, but then if an IV is not issued, the petition can be reviewed at the sub-offices. Can you clarify this?

Response: To clarify, the term Visas 92/93 is a reference to a type of cable that the State Department used to send when a beneficiary of an approved I-730 was found eligible for travel to the U.S. It is still often used as short-hand to reference the issuance of travel documents to asylee and refugee family members seeking to join their families in the U.S. The I-730 petition is filed by the petitioner in the United States and adjudicated at a domestic service center. Once approved, the case is sent overseas so that the appropriate USCIS field office or consular section (in locations where USCIS does not have a presence) can conduct an interview with the beneficiaries to confirm identity and eligibility for the benefit. If the interviewing officer determines that he or she cannot issue the travel documents to the beneficiary, the officer returns the petition, with an explanation of the concerns, to the USCIS domestic service center (via the National Visa Center) that originally adjudicated the petition. Although overseas consular sections may consult with USCIS field offices in such cases, they would not refer the case to a USCIS field office overseas.

Under current procedures, only the service center that approved the I-730 petition has jurisdiction to reopen or reconsider the adjudicative decision. If the service center determines that the issues raised by the overseas USCIS officer or DOS consular officer merit revocation of the petition approval, then a notice will be sent to the petitioner informing him or her that the service center is reopening the case and is intending to deny the petition based on the reasons stated in the notice. The petitioner then has an opportunity to rebut the information in the notice and to submit additional evidence supporting his or her petition, if so desired. The USCIS service center will assess all the information submitted and make a final decision on the petition.

Adoption Issues

Question 5: Please provide an update on the status of adoption cases in Nepal.

Response: As of November 17, 2010, the U.S. Embassy in Kathmandu has received 62 Form I-600 petitions for children claimed to have been abandoned who, as of August 6, 2010 had been matched by the Government of Nepal with prospective adoptive parents, and therefore were not subject to the suspension. Of those, 3 have been approved and 33 that the Department of State found "not readily approvable" and forwarded to USCIS New Delhi (NDI) per 8 CFR 204.3 (h)(11) are pending. Of those, USCIS has issued 16 Requests for Evidence, and 17 cases are currently under review.

USCIS has dedicated additional staff to assist with the adjudication of these cases, including:

- Officers detailed to USCIS NDI from the Bangkok District
- Officers from the International Adjudication Support Branch in Anaheim.

Question 5a: How quickly will the USCIS be able to respond to RFEs and NOIDs?

Response: Once USCIS NDI receives a case from U.S. Embassy Kathmandu, it has taken on average 2 weeks to issue an RFE, if applicable. Nepal adoption cases remain a top priority for the USCIS office in NDI and any RFE/NOID response will be reviewed as expeditiously as possible. It is difficult to predict how long it will take to respond to RFE and NOID responses, as it will depend on the information provided in each case.

The public e-mail inquiry for New Delhi is CIS.NDI@dhs.gov

Question 5b. Is humanitarian parole an option for stalled cases?

Response: At this time, DOS and USCIS continue to process the adoption cases through normal immigration processing (Form I-600). Humanitarian parole is not intended to be used to avoid normal visa-issuing procedures or to bypass immigration procedures (i.e. Form I-600 or I-130 processing). In general, USCIS would not authorize parole to children who are not eligible to immigrate through the orphan immigration process because the evidence fails to establish they are orphans under U.S. law.

Question 6: Are there any future training workshops planned for officers working on adoption cases?

Response: USCIS International Operations Division (IOD) provides adoption training to newly hired Field Office Directors and adjudication officers before they travel to the USCIS office abroad. IOD also routinely incorporates adoption training into district conferences attended by USCIS field office staff abroad.

Question 7: We would like to commend the USCIS on the centralization of adoption cases at the National Benefits Center. AILA members report that this process is working well and that supervisors accept and respond to e-mail inquiries in a timely manner.

Response: We appreciate the commendation.

Waivers of Inadmissibility

Question 8a: Please provide us with the current approval rates and processing times for I-601 applications:

i. at all overseas district offices; and
ii. at the field offices within each district, including the Anaheim office.

Response: We will be posting I-601 completion statistics (FY10 forward) on our Internet site soon. They will then be available to the public, including AILA. After the next release of CAMINO in January, we will begin posting processing times for all field offices.

Question 8b: At our last meeting in December 2009, RAIO stressed its commitment to reducing the waiver adjudication time to 6 months. Please provide an update on progress in this area.

Response: By the end of FY2010, the International Operations Division achieved an overall 3.8-month processing time for Forms I-601 filed overseas, based on mathematical calculations (i.e., at the end of the year we had pending a number of cases equal to 3.8 months of receipts). In FY2010, we reduced the total number of pending Forms I-601 by 42% from 11,318 to 6,508. Approximately 75% of all overseas Forms I-601 were filed in Ciudad Juarez (CDJ). Of cases filed in Ciudad Juarez (CDJ) and adjudicated in FY2010, we approved approximately 50% within 2 weeks of receipt. We reduced the pending number of cases that could not be processed within that time period (the "referred" cases) by 65% from a high of 11,000 to 3,900 CDJ cases at the end of the FY2010.

Question 9: AILA members report that the time period between IV interviews and waiver application interviews at CDJ has been steadily increasing. While this period was initially a few days, it has moved from 3 weeks to over 6 weeks and is now nearly 10 weeks. Is this a temporary delay because of the holidays? Does it reflect an upswing in case numbers or downswing in available officers?

Response: The Teletech Call Center is currently taking appointments for the middle of January, 2011. The time between the IV consular interview and the waiver submission appointment has grown for four reasons:

1. DOS increased their IV interviews over the last several months;
2. End of year holidays (United States and Mexican);
3. Mandatory home leave and regular end of year annual use or lose leave for overseas adjudicators; and
4. Transition to CAMINO.

We expect this time period to decrease after the holidays.

Question 10: At our last meeting in December 2009, RAIO indicated that it was working on a new Q/A program including a standardized checklist for adjudicating waiver applications in an effort to create uniformity among officers in adjudicating hardship. Has this checklist been finalized and implemented?

Response: International Operations is refining the checklist for the I-601 application. It is currently in draft form; however, it has been used in the pilot quality assurance reviews that have taken place over the past year. Based on feedback received from overseas staff, we are revising the checklist, which will be used at next quarter's QA review. Once it is finalized, we will post it to the Internet.

Question 11: Would the USCIS consider initiating pilot programs at posts other than CDJ to expedite the processing of waiver applications filed abroad?

Response: We do not have plans to adopt the CDJ model at other posts abroad at this time. We are looking at other models for adjudication of the Forms I-601, including those made in the Ombudsman's report on overseas processing of Forms I-601. Please see:
http://www.uscis.gov/USCIS/Resources/Ombudsman%20Liaison/Responses%20to%20Formal%20Recommendations/cisomb-2010-response-45.pdf

Question 12: We continue to receive reports of delays on the transfer of files from the DOS to the USCIS for adjudication of waiver applications. Does the USCIS have statistics or other information regarding the time period for transferring files between the two agencies? Would the USCIS consider electronic submission of waiver applications? Would this alleviate delays or would the physical file still be needed to begin adjudication of the waiver application? Is the USCIS able to electronically notify consular posts of I-601 approvals to streamline the visa process? At our last meeting in December 2009, RAIO stated that it would check with DOS to see if DOS needs the physical file before commencing the visa process.

Response: With the Department of State (DOS), USCIS is exploring options to enable applicants to file Forms I-601 directly with USCIS. This would streamline the receipt process and eliminate delays in transferring applications from DOS to USCIS. We are also engaged in discussions with DOS on ways to gain efficiencies in processing by moving toward electronic transfer of information.

Question 13: At our last meeting in December 2009, RAIO stated that it would look into whether international posts would be able to e-mail waiver application receipt notices and decisions to the attorneys of record in addition to sending these by standard mail. E-mail notification to counsel and clients on denials would be very helpful, given the delays in mail delivery in certain parts of the world and the short timeframes within which to file responses or notices of appeal (i.e. mail from Athens to Istanbul may take 2 to 4 weeks). Do you have an update on this request?

Response: We share your concern about delays in various overseas mail systems and often communicate with applicants via e-mail regarding their cases, taking into account privacy concerns. We will be providing standardized guidance to overseas staff in the revised procedures that take into account privacy issues related to sending information over the Internet, as well as regulatory notice requirements.

Question 14: As a committee, we frequently receive reports from AILA members on legal issues in waiver adjudications, including decisions involving clear mistakes of law and/or those where it is apparent from the text of the decision that critical hardship documentation (particularly supplemental documentation submitted following referral from CDJ) was not considered. How should we bring these issues to your attention?

Response: Complaints regarding adjudications at a particular field office should be first addressed to the District Director that has jurisdiction over that office. The addresses (including e-mail addresses) of each District may be found on their Internet sites. If it is felt that the issue has not been appropriately addressed, a letter may be sent to Joanna Ruppel, Chief of International Operations, USCIS, 20 Massachusetts Ave., NW, Washington D.C., 20519.

Question 15: We would like to see USCIS issue a memo regarding diminished culpability or absence of culpability for immigration violations committed under the age of 18, especially in regard to false claims of citizenship and the permanent bars under INA §212(a)(9)(C)(i). Attached is our legal brief addressing this issue for your review.

Response: We appreciate AILA's input and legal thinking provided in the memorandum of law provided for this meeting. As it raises legal issues that are applicable to all of USCIS, as well as the Department of State, we have forwarded the memorandum to the USCIS Office of Chief Counsel for consideration.

Question 16: At our last meeting in December 2009, RAIO stated that it would consider issuing an SOP on the adjudication of INA §212(a)(9)(B)(v) waivers for minors whose only ground of inadmissibility is unlawful presence and who were under age 14 at the time of their most recent entry. RAIO stated that it

would consider the young age of the applicant as a favorable factor in the adjudication of the waiver application. Can you provide an update on the proposed SOP for §212(a)(9)(B)(v) waivers for minors?

Response: IO is in the process of updating the standard operating procedure on Form I-601 issued in May 19, 2009, and expects to issue the update of the manual the by the end of the second quarter of FY2011. An SOP specific to minors is not planned. Updated procedures specific to the adjudication of cases involving minors under the age of 14 who are subject to inadmissibility under INA §212(a)(9)(B)(v) will be included in the updated procedures. IO appreciates and has taken into account AILA's input on this issue.

Requests for Evidence

Question 17: Could the USCIS provide statistics on the number of Requests for Evidence issued by international posts? What is the policy on requesting additional time to respond to RFEs? What is the procedure to request additional time to respond to an RFE? Will the post take into consideration whether the RFE was delivered by mail and the amount of time it takes to receive mail in certain regions? Would the USCIS consider accepting responses to RFEs via e-mail? As mentioned in question 13, e-mail notification to counsel and clients on RFEs would be very helpful, given the delays in mail delivery in certain parts of the world and the short timeframes within which to file RFE responses.

Response: At this time, we do not have data on the number of Requests for Evidence issued by our international offices. Once we gather the data available in CAMINO and develop RFE reports, we can post this information on the Internet.

Overseas offices are bound by the regulations set forth at 8 CFR 103.2(b)(80(iv) which provide:

> Process. A request for evidence or notice of intent to deny will be in writing and will specify the type of evidence required, and whether initial evidence or additional evidence is required, or the bases for the proposed denial sufficient to give the applicant or petitioner adequate notice and sufficient information to respond. The request for evidence or notice of intent to deny will indicate the deadline for response, but in no case shall the maximum response period provided in a request for evidence exceed twelve weeks, nor shall the maximum response time provided in a notice of intent to deny exceed thirty days. Additional time to respond to a request for evidence or notice of intent to deny may not be granted.

Overseas offices do take into account local and international mails systems and generally allow the maximum amount of time allowable by regulation. Whether or not responses to RFEs will be accepted by e-mail depends on the post and their capacity to receive large amounts of materials electronically. We still have issues at certain posts with limited band width and large e-mails can crash our system. We continue to appreciate the recommendation from AILA that we notify applicants of the need for additional evidence via e-mail and will address that issue in our revised procedures.

Humanitarian Parole

Question 18: Can USCIS provide more detailed information concerning the types of cases that are generally appropriate for humanitarian parole? Did USCIS formally release the Protocol and SOPs for Humanitarian Parole Requests?

Response: Section 212(d)(5)(A) of the Act authorizes the Secretary of the Department of Homeland Security (DHS)1 "in [her] discretion [to] parole into the United States temporarily under such conditions as [she] may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission into the United States,. . . ."

To be eligible for humanitarian parole into the United States, an alien must:

(1) apply for parole in accordance with relevant form instructions;
(2) be an applicant for admission to the United States;
(3) establish that parole serves an urgent humanitarian reason; and
(4) establish that he or she merits parole as a matter of discretion.

Each parole request is reviewed on a case-by-case basis. Some of the reasons parole may be requested include, but are not limited to the following: to seek critical medical treatment that cannot be obtained in the home country, for urgent need for immediate family unification, to attend critical legal proceedings, or other urgent humanitarian reasons for which a visa could not be obtained.

While we are working on Standard Operating Procedures for Humanitarian Parole Requests, we do not yet have a version for public release.

Question 19: While we realize that each case is to be evaluated based on its specific circumstances, we are hoping further guidance can be provided concerning specific case profiles, for example:

- A minor child, whose parents have both immigrated lawfully to the U.S. and there are no close relatives in the child's home country to provide care. Is there a realistic maximum age where parole will not be seriously considered? What if one of the parents has lawfully immigrated and the other is not an LPR, but say, is in removal proceedings and applying for relief?
- The spouse of a U.S. citizen, where the alien is presently ineligible to apply for an I-601 waiver due to permanent inadmissibility such as under INA §212(a)(9)(C), or another unwaivable ground.

Response: Each case is decided on a case-by-case basis and we would need additional information to adjudicate the cases described above. For example, in the first scenario, we would want to know why the parents couldn't return to or otherwise provide care in the home country. There is no age limit that would preclude favorable consideration of authorizing parole for a minor child, but the circumstances of the child such as capacity and vulnerability without care would be considered. In the second scenario, the listed facts alone would not qualify an individual for parole. The desire for family unity, without more, is not a basis for parole, as parole cannot be used simply to circumvent statutory requirements for immigration. Humanitarian parole can be authorized only after an applicant establishes both that there are "urgent humanitarian reasons" for the applicant to receive temporary authorization to be in the United States, and the applicant merits a favorable exercise of discretion.

[1] Homeland Security Act, 6 U.S.C. §§ 251-98 (transferring authorities exercised exclusively by the former Immigration and Naturalization Service to DHS).