

**National Benefits Center
American Immigration Lawyers Association
Agenda for December 9, 2016 Teleconference**

New NBC Initiatives, Staffing Updates and Follow-Up Items

1. Please provide updates on new NBC initiatives, including any new standard operating procedures that are currently in process or are scheduled.
 - Special Immigrant Juvenile case centralization came to NBC November 1, 2016
 - USCIS published the final rule expanding the categories of those eligible to file for a Provisional Unlawful Presence Waiver (form I-601A) and it became effective on August 29, 2016
 - USCIS published a policy on establishing Extreme Hardship and is effective December 5, 2016. This policy affects the adjudication of I-601As
 - Military Naturalizations were received as a workload in June
 - We are in the planning stages for transitioning Form N-565 (Application for Replacement Naturalization/Citizenship Document) from Nebraska Service Center to NBC
2. Please provide an update on the staffing levels at the NBC, including the number of federal employees and contractors. Please indicate whether there have been any key staffing changes that have taken place since our last engagement agreement on May 6, 2016.¹

NBC currently has nearly 900 federal employees on site plus about 1200 contract employees.

3. Please provide a list of form types currently being processed at NBC and indicate which location processes each form (i.e. Lee's Summit facility or Overland Park facility).

See the attached listing.

G-28 Submission

4. When filing Form I-130 concurrently with Forms I-485, I-765 and I-131, is the attorney required to submit multiple G-28s (one for each form) or will NBC accept one G-28 with all forms identified on Page 1, Part 2, item 1.b.?

Yes, a single G-28 for each applicant or petitioner within the filing package is sufficient. In this scenario there should be one G-28 for the I-130 petitioner, and a separate G-28 for the applicant on the I-485, I-765 and I-131.

Form I-90

5. At our last engagement on May 6, 2016,² NBC indicated that responsibility for all functions associated with I-90s would soon be residing with the Potomac Service Center (PSC).

¹ AILA NBC Liaison Committee Meeting Minutes (5/6/2016), AILA Doc. No. 16080935, Question 2, available at <http://www.aila.org/infonet/liaison-meeting-aila-nbc>.

a) Has that transition been completed?

Yes.

b) Are any Form I-90 applications still being processed at NBC?

Yes, as of 22 February 2017, we have approximately 8 pending I-90 cases.

c) Has the transfer of Form I-90 applications from the NBC to the PSC affected processing times?

As of September 30, 2016, the processing date for I-90 cases at Potomac Service Center is March 13, 2016: <https://egov.uscis.gov/cris/processTimesDisplay.do>

Production and Delivery of Permanent Resident Cards

6. Does NBC play a role in the physical production of Permanent Resident Cards or Employment Authorization Documents produced at the card production facility in Lee's Summit, MO? If so, what role does it play?

No. NBC does not oversee or play a role in the production of Permanent Resident or Employment Authorization cards at the Lee's Summit Card Production Facility. We do coordinate with both the Card Production Facilities (Corbin KY and Lee's Summit) when necessary, to resolve customer inquiries regarding card production issues.

I-601A / I-601A Expansion

7. Please provide Form I-601A statistics for FY2016 and FY2017 to date, including the number of receipts, approvals, denials, RFEs issued, and approvals after RFEs. How many I-601A applications have been filed since the expansion went into effect on August 29, 2016?

Unofficial data locally produced by NBC for I-601A production follows for question 7.

- The number of Form I-601A applications received, approved and denied by the NBC:

NBC I601A Weekly Report	FY 2016 Total	FY 2017 YTD	Total Since 3/3/2013
Accepted Receipts	53,137	7,376	167,553
Approvals	33,210	6,052	105,577
Denials	6,906	548	32,432

² AILA NBC Liaison Committee Meeting Minutes (5/6/2016), AILA Doc. No. 16080935, Question 1, available at <http://www.aila.org/infonet/liaison-meeting-aila-nbc>.

- The number of Form I-601A applications for which the NBC issued a Request for Evidence:

NBC I601A Weekly Report	FY 2016 Total	FY 2017 YTD	Total Since 3/3/2013
RFEs Issued	10,956	1,573	52,510

- The number of Form I-601A applications approved after a response to an RFE:

NBC I601A Weekly Report	FY 2016 Total	FY 2017 YTD	Total Since 3/3/2013
Approvals after RFEs	6,792	965	31,224

NBC saw an approximate 25% increase of incoming I-601A files since the expansion went into effect on 8/29/2016. The NBC also saw a higher than usual number of applications being rejected at the same time due to submission of I-601As on the older version application.

- The number of Form I-601A applications filed since the expansion rule went into effect on 8/29/2016:

	Before 8/29/2016	After 8/29/2016
Weekly Average Incoming I-601As	1,049	1,491
Weekly Average Rejected I-601As	193	435
Weekly Average Accepted I-601As	856	1,056

8. During our last engagement on May 6, 2016, NBC indicated that its current processing time goal for I-601As was 90 days. What is the NBC's current processing goal for I-601A applications?

The current processing goal for I-601As is 90 days. With the combination of the pending Extreme Hardship Policy and the added workload based on the expansion of eligible categories, we are unable to predict with any accuracy, the overall impact these changes will have on processing times or resources.

9. Does NBC intend to add extra staff to handle the additional I-601A applications filed as a result of the expansion of the I-601A waiver program?

Yes. USCIS will add additional staff to meet the resource needs based on the recent expansion.

10. What are the most common reasons the NBC denies Form I-601A applications?

The top reasons the NBC denies Form I-601A applications are due to the following:

- No Extreme Hardship to the Qualifying Relative.
 - After a review of the application, the information provided, a request for evidence sent, and a final analysis of the overall claims with all submitted information; the officer does not find the claims of hardship to the qualifying relative rise above the level of common consequences of separation or relocation.
- Abandonment.
 - A response to a Request for Evidence is not received or not received in a timely manner.
- No Eligible Qualifying Relative.
 - Qualifying Relative is defined as a U.S. citizen or LPR spouse or parent.
- Applicant is subject to Removal Order.

11. How will officers process cases where additional grounds of inadmissibility are identified, given that USCIS eliminated the “reason to believe” standard? For example, will there be a mechanism to alert the applicant that an additional ground was identified? Does USCIS plan to alert DOS [Department of State] when it identifies an additional inadmissibility ground?

USCIS will continue to do background checks on all applications for a provisional unlawful presence waiver. USCIS does not conduct a full of assessment of an applicant’s admissibility to the United States. That is completed by DOS at the time of the immigrant visa interview. So USCIS will not send a notice to the applicant if other grounds of inadmissibility may exist beyond the ground of unlawful presence under INA section 212(a)(9)(B) or notify DOS if such grounds may exist.

12. If an officer identifies a clear, additional ground of inadmissibility, such as re-entry after a prior expedited removal, how might it impact the officer’s balancing of the case equities to determine whether the applicant warrants a favorable exercise of discretion?

USCIS cannot respond to hypothetical scenarios. Each application for a provisional unlawful presence waiver has specific case facts and factors that may be considered when determining whether a favorable exercise of discretion is warranted. Each case will be thoroughly reviewed and evaluated based on the evidence in the record, and evidence submitted by the applicant with the initial filing, and any evidence submitted in response to an RFE (if issued in the case).

13. USCIS recently started issuing RFEs that note that the primary wage earner is “working without authorization within the United States.” Please explain why the fact a primary wage earner is working without authorization in the United States is relevant when adjudicating Forms I-601A.

NBC was provided one example; we found this to be an error on our part which has been corrected.

I-131 & I-765 RFEs

14. AILA continues to receive reports of NBC issuing RFEs requesting evidence of lawful admission or parole in connection with I-131 and I-765 applications where the applicant (as part of the submission) has presented either evidence of Section 245(i) eligibility or Matter of Quilantan type evidence of inspection and admission (such as a sworn affidavit or other evidence).

- a) Please confirm that, in cases where the applicant is filing under Section 245(i), evidence of lawful admission or parole should not be required.

If the evidence of 245(i) eligibility was submitted with the I-485, an RFE requesting evidence of lawful admission or parole in connection with the I-131 and I-765 is not required. However, for those asserting admission under Matter of Quilantan, the applicant must always present evidence in support of the claim. Section 240(c)(2)(B) of the Act.

- b) At our last engagement on May 6, 2016, NBC indicated that written testimony (such as affidavits of statements signed under penalty of perjury under United States law) could be provided where primary evidence or other secondary evidence of inspection and admission is not available. Please confirm that, in this type of situation, an RFE requesting evidence of lawful admission or parole should not be required.

An applicant who claims an admission to the United States, whether in the ordinary sense or in the sense addressed in Quilantan, cannot simply assert the claim. The applicant must always present evidence in support of the claim. Section 240(c)(2)(B) of the Act.

Primary evidence is always the most probative. If there is no primary evidence of admission – a Form I-94 (whether provided at the port-of-entry or obtained from the CBP website), or similar DHS record – the presumption is there was no admission. 8 CFR 103.2(b)(2)(i). But there may be other evidence that can overcome the presumption. An applicant must show that primary evidence is not available, before the applicant can offer secondary evidence or oral testimony or written statements signed under penalty of perjury under 18 U.S.C. 1746

Secondary evidence could include documents created and maintained in the ordinary course of business by an individual or entity other than DHS. The regulation gives as examples religious or school records, if public vital records are not available. For secondary evidence, the chief concerns would be (a) is the document authentic and (b) what can reasonably be inferred from the document about whether the claimed admission took place.

Written testimony can be provided if the applicant shows that neither primary nor secondary evidence is available. The regulation refers to “affidavits,” but statements “signed under penalty of perjury under United States law” have the same effect. 28 U.S.C. 1746. Written testimony must be based on the personal knowledge of the signer. It is likely that a statement that provides considerable detail about the claimed time, date and place of admission, the possession of travel documents (and if so, what documents), any exchange with the inspector that the individual may have had or witnessed, etc., would be more persuasive than one that makes merely conclusory allegations.

As noted, primary evidence, if available, must be presented. If it is not available, the applicant must specifically assert that it is not available. If the applicant does not respond to an RFE requesting primary evidence, the I-485 and ancillary application may be denied as abandoned. Thus, the applicant must respond, even if the proper response is that there is no primary evidence available, and the applicant is relying on secondary evidence or written statements.

USCIS understands that many Quilantan claims will rest chiefly on testimony. In these instances, if the applicant relies primarily on written testimony, the applicant should anticipate that the case will be forwarded to the appropriate field office.

I-485 Interview Waiver Cases

15. Processing times for interview-waiver I-485 applications continue to lag behind the processing times for non-interview-waiver cases.

- a) Please provide an update on what is being done to speed up the processing times for interview-waiver cases and when stakeholders can expect the processing times for these cases to come into line with other I-485 applications.

Field Operations Directorate continues to work to ensure I-485s are processed timely including equitable processing times for both interview and interview waived I-485s.

- b) If a case appears to be an interview-waiver I-485 case, at what point should can/should an applicant or his/her attorney contact USCIS to inquire about the case?

We ask that you inquire about the status of cases when they appear to be outside published processing times.

- c) Can the different processing times for interview-waiver cases be reflected on USCIS’s processing time reports?

USCIS has no plans to separate the processing times for interview-based and non-interview based cases.

I-485 (Application Filing Dates vs. Final Action Dates)

16. How is NBC handling I-485 adjustment of status applications where the application was properly filed based on the “Dates for Filing” chart in the Visa Bulletin, but the “Application Final Action Dates” is not yet current? Are these cases being forwarded by NBC to local field offices for interviews and then being returned to NBC for monitoring of visa availability?

NBC processes I-485 applications filed based on the Dates for Filing chart and reviews for initial evidence requirements. When the review is complete and the case meets the initial evidence requirements, it will be kept at the NBC. When the applicant’s priority date becomes current based on the Final Action Date, NBC will make the application available for the Field Office to schedule for interview. If the applicant’s priority date remains current per the Final Action Date chart, the field office will adjudicate the I-485 application. Occasionally, an I-485 application may be made available to the field for scheduling in error before the applicant’s priority date is current per the Final Action Date chart. In this case, the field office will conduct an interview as scheduled and return the I-485 application, if it is approvable, to NBC for final adjudication when applicant’s priority date becomes current per the Final Action Date chart.

17. In cases where the “Application Final Action Date” retrogresses after the case is correctly filed but before it is approved, how should individuals notify NBC once the priority date becomes current again? How soon after the priority date is current should individuals expect a decision?

Customers do not need to notify NBC once their priority date is current. If the case is located at the NBC and an interview has not been conducted when the relevant cutoff date in the Final Action Date chart retrogresses, NBC will monitor the visa availability. Once the applicant’s priority date becomes current again per the Final Action Date chart, NBC will make the case available to the field office for interview. If the applicant has been interviewed and the application is approvable but the relevant cutoff date in the Final Action Date chart retrogresses, the field office will return the case to the NBC just like other retrogressed visa cases. When the applicant’s priority date becomes current again per the Final Action Date chart, NBC will complete the final adjudication. Our goal is to initiate action on the case before the end of the month their final action date becomes current.

Delayed Data Entry on NBC Cases

18. Since spring of 2016, stakeholders have reported delays in the initial online data entry for many cases processed by the NBC. It often takes several weeks, or even months in certain cases, for receipt numbers to appear in the Customer Relationship Interface System (CRIS). These delays are more significant than those experienced with cases pending at other service centers. What is the reason for this delay and what efforts are being made to improve initial data entry for these cases?

Earlier this year NBC determined that data in our systems which is received from a Lockbox was not synchronized with the data on the applications we were processing. We collaborated with USCIS' Office of Intake and Document Production (OIDP) and Office of Information Technology (OIT) to identify the cause of and resolved any inconsistencies. We continue to work with OIT and OIDP to constantly monitor this process and we are not aware of any significant gaps. We ask that you provide examples to Lockbox Support.

Affidavits of Support

19. At our last engagement on May 6, 2016, NBC indicated that it changed its I-864 checklist so that, if the income on the sponsor's most recent federal income tax return does not meet the poverty guideline for the household size, NBC will check to determine if there is evidence that the current income meets the poverty guideline.³ AILA members continue to report that they have been receiving RFEs from the NBC requesting an Affidavit of Support from a Joint Sponsor in cases where such proof of current income was provided.

- a) Please confirm that the NBC's I-864 checklist still provides that the income requirement can be met either on the basis of the income amount evidenced on the sponsor's most recent federal income tax return or (if such income is not sufficient) by proof of current income evidenced by either 6 months of pay stubs of the sponsor or a letter of employment.

NBC checklist is set up to review the current income when the income on the most recent federal income tax return does not meet the poverty guideline for the household size. The following items can be considered as proof of income:

- Letter from employer
- Pay stubs that shows weekly, monthly, or yearly earnings
- Social security benefits statements
- Pension/retirement disbursement statements
- Verification of Employment/Employment Verification
- Department of Veteran Affairs Disability statement/letter
- Six (6) hand written pay checks within six months of the I-864 signature date

Contacting NBC

20. Have there been any updates to the attached procedures (Appendix A) for attorneys to contact the NBC, which were circulated in March 2016?⁴

There are no updates to the procedures.

³ AILA NBC Liaison Committee Meeting Minutes (5/6/2016), AILA Doc. No. 16080935, Question 17, *available at* <http://www.aila.org/infonet/liaison-meeting-aila-nbc>.

⁴ See Appendix A.

Special Immigrant Juvenile (SIJ) Centralization

21. How will NBC track the 180-day adjudication deadline for Form I-360 SIJ petitions?

The NBC has internal procedures in place to track the 180 day adjudication timeframe.

22. With regards to the validity of the state court predicate order, can NBC confirm that the predicate order would continue to be valid in the following hypothetical situations, where the final action of the state court occurs before the child turns 18:

For question 22a through e: USCIS cannot provide guidance and definitive answers to hypothetical scenarios. Each SIJ case is unique and varies in the level of complexity. Providing information based on these scenarios could be misleading to our stakeholders and the public at large. USCIS policy on the validity of court orders can be found in the USCIS Policy Manual, Volume 6, Part J Special Immigrant Juveniles.”

- a) Where a family court makes the SIJ findings and then makes a final custody order ruling that full physical custody would go to the parent who was not the subject of the nonviable reunification determination.
- b) Where a family court issues the same orders as above, but grants both parents joint legal custody (but full physical custody is still to the parent who was not the subject of the nonviable reunification determination).
- c) Where a dependency court takes jurisdiction over a child and makes the SIJ findings, but then terminates proceedings to return the child to the parent who was not the subject of the nonviable reunification determination.
- d) Where a delinquency court makes the SIJ findings, but then terminates jurisdiction once the child completes probation thereby returning the child to the custody of the parent who was not the subject of the nonviable reunification determination.
- e) Where a probate court makes the SIJ findings and orders a guardianship with a non-parent, but then later (before the child turns 18) terminates the guardianship and returns the child to the parent who was not the subject of the nonviable reunification determination.

23. With regards to the validity of the state court predicate order, can you confirm that the predicate order would *not* continue to be valid in the following hypothetical situations where the final action of the state court occurs before the child turns 18:

- a) Any of the above situations where the court orders the child into the custody of the parent who was the subject of the nonviable reunification determination.

Please see the previous response.

24. Please provide USCIS guidance on what it considers to be a “temporary order.”

The temporary unavailability of a child’s parent does not meet the eligibility requirement that family reunification is not viable. Lack of viable reunification generally means that the court intends its finding to be that the child cannot reunify with his or her parent (or parents) remains in effect until the child ages out of the juvenile court’s jurisdiction. Court-ordered dependency or custodial placements that are intended to be temporary generally do not qualify for the purpose of establishing eligibility for SIJ classification. A court-appointed custodian that is acting as a temporary guardian or caretaker of a child, taking on all or some of the responsibilities of a parent, is not considered a custodian for purposes of establishing SIJ eligibility.

25. How far in advance of the priority date becoming current will the NBC issue an RFE for a medical exam?

In the case of visa retrogressions and interview waived SIJ cases, a RFE will be issued to submit a new medical, if needed, approximately 30 days in advance of the visa becoming available.

26. Can you confirm that an adjustment of status application can still be granted if removal proceedings were terminated after the date of filing? If removal proceedings have not been terminated at the time of review of the I-485, will the NBC issue an RFE requesting a termination order?

If the Form I-485 application was filed with USCIS while the immigration judge had jurisdiction over the application, it may have been administratively closed by USCIS. NBC will not RFE requesting a copy of the IJ’s termination order prior to administratively closing the I-485 filed with USCIS instead of the immigration judge. The applicant and/or legal representative will receive a notification of the application closure in a letter from NBC. If proceedings are terminated and the applicant wants to reopen the closed I-485, the applicant should follow the instructions in the notification letter from NBC. Those instructions are to call the USCIS National Customer Service Center at 1-800-375-5283 to provide the updated information. Customers can also write to NBC directly at:

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

27. Chapter 7 of the USCIS Policy Manual contemplates the unavailability of juvenile delinquency dispositions when they are sealed and expunged under state law. Please confirm that this policy also applies when the records are unavailable due to state juvenile records confidentiality laws even before the records are sealed or expunged.

If an applicant believes that an arrest resulted in adjudication of delinquency, and not in a conviction, the applicant must submit a copy of the court document that establishes this.

If an applicant is not able to obtain certified copies of the court disposition, the following should be submitted:

A. An explanation of why the documents are not available, including (if possible) a certificate from the custodian of the documents explaining why the documents are not available;

B. Any secondary evidence that shows the disposition of the case; or

C. If secondary evidence is also not available, one or more written statements, signed under penalty of perjury under 28 U.S.C. Section 1746, by someone who has personal knowledge of the disposition. The juvenile who is the subject of the proceeding may write a detailed statement in cases where the criminal record is unavailable.

28. Please confirm that the prohibition on petitioning for parents only applies if the petitioner actually adjusts status based on an SIJ I-360 and not if the petitioner was once the beneficiary of an approved I-360 but then adjusted status on another basis, such as asylum or U status.

NBC will apply the immigration laws and USCIS policy as appropriate. Juveniles who adjust status as a result of an approved SIJ based Form I-360 may not seek to confer immigration benefit to their natural or prior adoptive parents. The prohibition on natural parents or prior adoptive parents receiving an immigration benefit applies to SIJ based adjustment of status.

29. Police reports are not considered part of the record of conviction. Please confirm that, even if a disposition is required and available to document the outcome of an arrest, the police report will not be required.

Form I-485 instructions require an original or court-certified copy of the arrest record which would include the police report. The USCIS Policy Manual outlines the documentation and evidence that should be submitted to adjust status as an SIJ in Volume 7, Part F. Applicants should submit certified police and court records of juvenile delinquency findings, criminal charges, arrests, or convictions. The evidence submitted must clearly establish that the applicant is not inadmissible for a ground that cannot be waived. Furthermore, findings of juvenile delinquency may be part of a discretionary analysis.

30. AILA recommends that interviews be used sparingly in SIJ cases. Please provide the criteria that the NBC is relying on in order to determine whether interviews are necessary.

The NBC conducts a full review of the petition and supporting evidence to determine whether an interview may be warranted and generally will not forward cases for interview if the record contains sufficient evidence to approve the petition and adjustment application without an in-person assessment. NBC is not able to provide a list of specific criteria used to determine whether an interview is necessary.

31. [Additional question raised during the discussion]: The I-797 notice says to bring results of the medical. In some cases, 13 - 14 months have elapsed and the I-693 has expired. Can NBC change the notice?

NBC will take this under consideration.