



Questions and Answers

CLINIC Affiliates for the National Benefits Center Tour May 24, 2016

Overview

On May 24, 2016, Catholic Legal Immigration Network, Inc. (CLINIC) met with USCIS's National Benefits Center (NBC) to tour the Lee's Summit facility, discuss new NBC initiatives, staffing updates and to participate in question and answer session. The questions and answers are provided below for the benefit of interested stakeholders.

Questions and Answers

1. Question

We notice that the NBC is now taking SIJs, can you please provide any other new updates on NBC initiatives, including any new standard operating procedures that are currently in process or are scheduled?

Response:

I-90 applications are currently being adjudicated by the NBC and the Potomac Service Center. In the near future, responsibility for all functions associated with I-90s will reside with the Service Center Operations Directorate.

The NBC is anticipating the expansion of the I-601A process and the final policy and the rule/regulation changes. The NBC will train the officers on the new process once the new rule goes into effect, and the NBC expects a higher volume of applications after expansion.

The NBC's working group continues to work with the HQ Field Operations Directorate on the centralization of the I-360, Special Immigrant Juvenile (SIJ) cases. Field Operations has not established a firm date for centralization. The NBC is not currently processing the SIJ petitions.

The NBC will be assuming the Military Naturalization applications and the N-565s workloads from the Service Center Operations. Currently the NBC does not have a date for the transition.

2. Question

We are seeing some delay in transferring VAWA-based I-485s to local offices for interviews. Additionally, we are seeing general delays in processing I-485s that are in some instances over 9 months. Can you please comment on your current target times and these delays and give some context as to what we can expect on timing going forward?

Response:

The NBC is unaware of anything specific that would delay the transfer of a VAWA-based I-485 to a local office for interview. If you have specific examples, please provide the receipt numbers so that we can review those cases.

One reason for delays that affect all I-485 processing may stem from the slower than usual completion of security checks. USCIS conducts a security checks on applicants for adjustment of status. Currently, USCIS acknowledges that there are some delays in background checks and is working towards resolution of the delays. The NBC does not typically forward applications to local offices for interview until all security checks have been completed.

3. Question

Recently we are seeing that many cases that do not typically require interviews are also being sent to the local office for interview. Can you please give any updates as to why that is happening and what we can expect in the future?

Response: The NBC identifies Interview Waiver (IW) cases based on criteria established in 2002. Once IW cases are identified and pre-processed at the NBC, the files are sent to various USCIS field offices for adjudication. Officers at the NBC and at the field office locations who review and/or adjudicate these cases may determine based on information in the file, that the applicant needs an in-person interview. There has not been a recent change in this process.

4. Question

We are seeing the NBC sending repeat RFEs for affidavit of support in many cases. For most of these cases, all the information for the affidavit of support is included but the information is requested again. How can we avoid this in the future? What suggestions and guidance can you offer?

Response: If you have examples, please provide the receipt numbers so that we can review those cases. Without an example of a case or cases where this occurred, the NBC is unable to provide guidance or suggestions about how to avoid repeat RFEs. In general, you should refer to Parts 6 & 7 of the I-864 form instructions for the type of evidence that should be submitted with the application.

RFEs

5. Question

We have received several I-864 RFEs that have been easy to resolve and seem to perhaps reflect an inaccurate or an outdated checklist. Can you please provide some guidance on this matter?

Response: See Response to Question 4.

Question

We have been receiving RFEs for the \$1000 fee (which is paid but receipted on I-485 with the regular AOS fee as well and not a separate I-485A receipt). Can you please provide some guidance on how to avoid this issue in the future?

Response: Beginning sometime in November, data elements for some applications were not properly uploaded into the electronic adjudication system. This resulted in some applications showing missing or incomplete information, including whether the \$1000 fee had been paid. The NBC has issued RFEs in cases where an officer could not confirm through system checks that the penalty fee had been paid.

6. Question

In a Q&A NBC stated types of documents applicant may submit to prove legal entry in an adjustment application. What kind of documents can the applicant submit to prove “procedural entry” (Matter of Quilantan).

Response: An applicant who claims an admission to the United States cannot simply assert the claim. The applicant must always present evidence in support of the claim. See Section 240(c)(2)(B) of the INA 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 written testimony. 8 CFR 103.2(b)(2)(i).

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.

The AOS checklist was designed to automatically generate an RFE for lawful entry in cases where the applicant does not submit primary evidence of a lawful entry because the volume of cases applying to Matter of Areguillin or Matter of Quilantan is limited. 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 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 probably be forwarded to the appropriate field office.

I 601A

7. Question

I-601A case processing time shows October 2015 but several cases filed months prior to October have not been adjudicated yet. Can you please provide us with any updates on this situation?

Response: The current processing goal for I-601A applications is 90 days. Cases may be placed in suspense for various reasons, including but not limited to applicants rescheduling their ASC appointments and cases which are awaiting responses to a request for evidence (RFE). Additionally, the NBC recently underwent a large reorganization of staff and product lines between our two locations. This reorganization, the included training period and 100% supervisory review of case work by supervisors, which created some processing delays. All training has been recently completed, and processing delays are being shortened. If you have questions on specific cases, please reference the receipt number and contact the NBC.

Question

I 601A Filing Tips – Can the NBC please provide filing tips for I 601A applications? The NBC requests RFE for the applicant to show hardship if the qualifying relative remains in the US or if the qualifying relocates abroad. How much weight should the applicant place on hardship factors in the US and abroad?

Response: Currently, the applicant must establish extreme hardship to the qualifying relative for both relocation and separation. The elements to establish extreme hardship are dependent upon the facts and circumstances of each case and applicants should give equal weight to establishing extreme hardship to the qualifying relative for both relocation and separation.

Question

We are seeing some delay in I-601 A adjudications. Up until October/November 2015, we were seeing approvals in 2-3 months. Since November, the processing times have been closer to 6 months and we are frequently not receiving any communication at all. Can you please comment on your current target times and processing as well as the delays and also give some context as to what we can expect on timing going forward?

Response: See response to first section of question above.

Question

For demonstrating family ties, is there still a requirement to submit you submit proof of immigration status of every family member listed for family ties?

Response: Proof of immigration status and family relationship should be submitted for each qualifying relative who is not the immediate relative petitioner, as the petitioner would have already proven their relationship and status during the I-130 petition process.

Question

We have received I-601A approval notices stating that USCIS will communicate the approval to NVC. On the other side, a couple of times NVC has sent notifications explaining they cannot issue interview date because they have not received I601A approval notices. Can you please provide some clarification between USCIS and NVC regarding approved I-601As?

Response: USCIS sends an electronic report to the NVC on a weekly basis, indicating which cases have been adjudicated to completion, whether approved or denied. If the applicant has received notification from the NVC explaining they cannot issue an interview date because they have not received the I-601A approval notice, there may have been an issue with the electronic report or the update procedure in USCIS systems. If you encounter a situation like this, the applicant may contact USCIS National Customer Service Center (NCSC) for assistance at 1-800-375-5283. For TDD hearing impaired assistance, please call 1-800-767-1833.

Question

Can you please provide any updates on I601A denials during interview at U.S. Consulates in instances where the I601As were previously approved at NBC? Have you seen any trend/pattern of I601As denials returned to NBC? Could you please provide some guidance and context?

Response: NOTE: *The intent of this question is not clear, as it could be a reference to a Consular Return (due to fraud) or a query on the merits of a DOS denial of the IV.*

USCIS officers conduct a review of systems and records when adjudicating I-601A applications to determine if the applicant is eligible for the Provisional Unlawful Presence Waiver. At the time of the visa interview, the Department of State (DOS) makes a determination on the applicant's admissibility, in light of the approved I-601A. In the instances where the applicant is refused an immigrant visa, the consular officer determined that evidence of inadmissibility arose during the immigrant visa interview. Such information may not have been in USCIS systems or records and were not considered at the time the I-601A decision was made. As such, the negative determination of the consular officer results in an automatic revocation of the provisional waiver.