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U.S. Citizenship and Immigration Services
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U.S. Citizenship and Immigration Services

Questions and Answers

USCIS Field Operations Directorate – American Immigration Lawyers Association (AILA) Liaison Meeting

January 7, 2011

Overview

On January 7, 2011, the USCIS International Operations Division hosted an engagement with AILA representatives. USCIS discussed issues related to operations and adjudications. The information below provides a review of the questions solicited by AILA and the responses provided by USCIS.

Questions & Answers

Question 1: Filing G-28s in the context of pro bono community-based workshops in which the attorney assists in drafting the form or advising applicants. In light of 8 CFR § 1003.102(t), which sanctions practitioners from failing to file G-28s while at the same time requiring the preparer to sign N-400 applications, will USCIS require G-28s for each of the individuals assisted by attorneys? Is it possible to merely sign the N-400 as a preparer and omit the G-28 in certain pro bono circumstances?

USCIS Response: 8 CFR 1003.102(t) effectively requires the filing of a Form G-28 in situations where the attorney engages in "practice or preparation." "Practice" is defined in 8 CFR 1.1(i) as:

> "The act or acts of any person appearing in any case, either in person or through the preparation or filing of any brief or other document, paper, application, or petition on behalf of another person or client before or with DHS."

Practice, as well as preparation, includes situations where the attorney studies the facts of a case, renders an opinion as to potential eligibility for benefits, coupled with providing legal advice to an applicant. *See* 8 CFR 1.1(k). Presumably, attorneys assisting in the preparation of applications or petitions, even on a pro bono basis, are not merely transcribing information onto a blank form. Rather, such "practice or preparation," as described above, requires that they complete a Form G-28. An attorney or authorized representative, who no longer wishes to appear on behalf of an applicant, may submit a letter withdrawing representation to the office where the application is pending.

Question 2. Although we encourage all members to submit complete applications in all instances, sometimes in the adjustment context, the need for a waiver is revealed at the time of an interview. Waiver preparation involves gathering a vast amount of information, some of which comes from overseas. Nevertheless, we are advised by members that some adjudicators issue an I-72 requesting a waiver application and grant only a two week period to respond. By analogy, the June 1, 2007, USCIS Memo (see "Removal of the Standardized Request for Evidence Processing Timeframe Final Rule, 8 CFR 103.2(b)(8)(iv)") recommends that adjudicators authorize a flexible period to respond. Would the Field Operations Directorate direct adjudicators to offer a more reasonable period of time in which to provide a fully documented waiver application?

USCIS Response: Yes, adjudicators should provide more than a two-week response time for an RFE, particularly if foreign documents are requested. Appendix 10-9 of the Adjudicator's Field Manual (AFM) establishes the standard response times for requests for evidence (RFE). For initial evidence that the form instructions indicate must be filed with the form, the RFE period is 30 days. The response time is also 30 days for a response to a request for evidence (RFE) on a Form I-539, Application to Extend/Change Nonimmigrant Status. If USCIS requests evidence not specifically required by the form instructions, the standard response time is 42 days. If the evidence needs to be obtained from abroad, the response time is 84 days. Also, applicants will have, by regulation, only 30 days to respond to a Notice of Intent to Deny (NOID). *See* 8 CFR 103.2(b)(8)(iv). Under 8 CFR 103.2(b)(8)(iv), there is no extension of time to response beyond 12 weeks for an RFE or beyond 30 days for a NOID. Field Operations sent a reminder to the field regarding RFE response times on January 26, 2011.

Question 3. Has the Field Operations Directorate established a policy governing the number of separate matters which may be raised during an Infopass appointment for attorneys? Practice varies widely at field offices. Some offices permit inquiries on multiple cases with one Infopass appointment. Other offices require a separate Infopass appointment for each case inquiry. Also, what is a reasonable time to wait to be seen for a scheduled Infopass appointment?

USCIS Response: Currently, USCIS has not established a policy governing the number of separate matters that may be raised during a single Infopass appointment. Infopass waiting periods vary by office depending on volume. Some offices impose a time limit (e.g. 20 minutes) on each appointment and allow attorneys to ask as many questions about the same or different matters within that timeframe. Other offices require separate appointments for each matter.

The average amount of time USCIS customers wait to be called for an Infopass appointment is 7.5 minutes. This would appear to be reasonable. We recognize that in some high volume jurisdictions, customers wait far longer to be called for an Infopass appointment.

Question 4. What is the policy regarding the procedure for a legal name change during the naturalization process. We understand that the CIS permits applicants to complete a petition for legal name change during the application interview. However, at least one field office prohibits male applicants from legally assuming their spouse's last name, absent a separate legal name change. This practice conflicts with USCIS policy. Please clarify the agency policy.

USCIS Response: We appreciate your concerns regarding any practice you believe conflicts with established USCIS policy. On this particular question, we know that some Districts have had a misunderstanding regarding name changes based on state law that prohibits a man from taking his wife's last name when they marry. USCIS sent guidance to the field on January 25, 2011 reiterating to all of our offices that an applicant may change his or her name to any name approved by a court of competent jurisdiction.

Question 5. ICE's Morton Memo and Termination of Proceedings: Has the agency provided any guidance to the field offices as to how they should proceed on adjudication of immigrant petitions or other applications where removal proceedings have been terminated pursuant to the recent ICE Morton memo?

USCIS Response: USCIS guidance regarding ICE's memo is currently being considered.

Question 6. Where does the file go after transfer from ICE counsel, in the scenario above? Is there a way for attorneys to track file movement to ensure it will be scheduled for interview?

USCIS Response: If proceedings are terminated, ICE would likely route the file to USCIS for adjudication of any pending application or petition. Attorneys seeking information regarding the location of a particular A-file should contact the National Customer Service Center (NCSC) and ask to speak to a Tier 2 representative.

Question 7. Members report that some USCIS offices are requiring the payment of a filing fee once again where EOIR terminates proceedings so that an individual may file her adjustment application to the USCIS for adjudication. Would USCIS please confirm that when EOIR terminates proceedings after the respondent has paid the adjustment of status filing fee that no additional fee is necessary? Where should applicants file an I-765 and I-131 and with what proof that an adjustment of status is pending?

USCIS Response: There are different circumstances to which this question may apply.

If USCIS denies someone's Form I-485 application and places someone in proceedings, if the proceedings are terminated, the applicant will have to refile the Form I-485 application and pay the filing fee again (unless a fee waiver is granted or a fee is not required).

If the applicant initially files for adjustment of status before the Immigration Judge (IJ) and pays the fee through the Texas Service Center and the IJ terminates proceedings without making a decision on the Form I-485 application, USCIS will honor this filing and will not require that the applicant refile or pay the filing fee again. Field Operations recognizes that some offices have not been doing this and we have sent a reminder on January 25, 2011 indicating that these I-485s should be processed.

Finally, if USCIS made no final determination on an application for adjustment of status prior to the applicant being placed in removal proceedings (whether or not USCIS issued the charging document), and the IJ terminates without adjudicating the adjustment application, USCIS will

adjudicate the application at the request of ICE or the applicant, A new adjustment filing and fee would not be required in this scenario.

In regards to where to file the Form I-765 and Form I-131 when an adjustment of status application is pending, if the applicant filed a Form I-485 before the IJ and concurrently filed a Form I-765, the application should be filed with the Dallas Lockbox. If the applicant renewed his or her I-485 before the IJ, a Form I-765 may be filed with the Chicago Lockbox. An applicant in removal, deportation, or exclusion proceedings should file Form I-131 with the Immigration and Customs Enforcement Office of International Affairs: http://www.uscis.gov/files/form/i-131instr.pdf.

Other applicants should check the direct filing addresses. The Form I-131 direct filing addresses can be found by clicking on the "Forms" tab from the home page and then selecting Form I-131. A link to the direct filing addresses can be found on the right-hand side of the page. The Form I-131 direct filing addresses can also be found here.

The Form I-765 direct filing addresses can be found by clicking on the "Forms" tab from the home page and then selecting Form I-765. A link to the direct filing addresses can be found on the right-hand side of the page. The Form I-765 direct filing addresses can also be found here.

Question 8. Some field offices have severed the attorney case inquiry system, even on matters pending beyond a year, while other offices have effective case-status inquiry systems, utilizing e-mail boxes or a FAX system. For those offices which do not have effective case inquiry systems, members find inquiries through the NCSC often do not yield satisfactory information. What is the best method through which attorneys may conduct case status inquiries with such offices which are unresponsive case inquiries? What is the HQ recommendation?

USCIS Response: USCIS has established several tools to assist customers in obtaining information about case status. These tools include "My Case Status," the National Customer Service Center, and Infopass appointments. For general case status inquiries, all customers, including attorneys, should use these tools. Attorneys may also submit inquiries through their AILA Liaison. For urgent matters, most USCIS Directors have supplied contact information during regular AILA meetings and stakeholder conferences. If you have an inquiry, we recommend that you submit your questions through established processes. Finally, if you feel that your inquiry was not responded to appropriately, you are encouraged to raise your concerns to a supervisor. If you feel that the supervisor has not addressed your concerns, you are encouraged to raise this to the District Director, Regional Director, or USCIS Headquarters.

Question 9. Form I-751 adjudications in the Hardship and Abuse standard see rough adjudications where officers are asking demanding and personal questions to applicants. Please clarify training of adjudicators for such waiver cases.

USCIS Response: If you believe an ISO has acted unprofessionally in questioning an I-751 waiver applicant, we encourage you to raise your concern with the officer's supervisor, the Field Office Director, or the District Director in that order.

Question 10. Where an I-829 is denied and USCIS does not issue an NTA to start removal proceedings, can the petitioner and dependents obtain 1-year stamp of conditional permanent resident status? Regulations and AFM appear to say that petitioner and dependents should be given 1-year CPR stamps until a final order of removal has been entered. Please clarify that this is the policy of USCIS.

USCIS Response: Officers are advised that no extension of status can be given to an alien who has not timely filed a Form I-829, unless USCIS accepts a late petition based upon the alien's showing of good cause in accordance with 8 CFR 216.6(a)(5). Upon receipt of a properly filed Form I-829, USCIS is authorized by 8 CFR 216.6(a)(1) to extend automatically a conditional resident's status, if necessary, until such time as USCIS has adjudicated the petition. The I-797 receipt notice for the I-829 automatically gives a one year extension of status.

8 CFR 216.6(d)(2) states in regard to a denied I-829 that "the alien's lawful permanent resident status and that of his or her spouse and any children shall be terminated as of the date of the director's written decision." However, if the I-829 has been denied and an NTA has been issued, but no final order of removal has been entered, then USCIS must collect the expired conditional permanent resident card and follow established procedures for providing a temporary extension of the alien's conditional resident status upon request at a local USCIS Field Office. If the temporary extension is granted, then the aliens will be authorized to work and may travel outside the United States.