



Questions and Answers

National Benefits Center American Immigration Lawyers Association Agenda May 6, 2016

Overview

On May 6, 2016, the American Immigration Lawyers Association (AILA) met with USCIS's National Benefits Center (NBC) to discuss new NBC initiatives, staffing updates and follow up items. The questions and answers are provided below for the benefits of interested stakeholders.

Questions and Answers

New NBC Initiatives, Staffing Updates and Follow-up Items

1. Question

Please provide updates on new 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 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 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

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 on November 3, 2015.¹

Response:

- NBC currently has nearly 900 federal employees on site plus about 1050 contract employees.
- Julie Powers is the new Assistant Center Director for Adjudications, Division 3 (Ancillary Applications)

3. Question

We greatly appreciate the progress the NBC has made to reduce processing times and undertake adjudications in new product lines. What challenges does the NBC anticipate for the remainder of FY2016?

Response: USCIS ELIS will be a challenge for us as we start accepting the N-400 applications. N-400s are new to USCIS ELIS, and there will be a continual need to resolve technical issues, train adjudicators and keep up with an increasing number of applications as we receive them in.

We anticipate a higher volume of I-601A application once the new regulation has been finalized. With the finalization of the rule, the NBC will train officers on the new rule/policy.

When the NBC assumes the SIJ petitions and Military Naturalization applications, there will be a need for the NBC to train adjudicators in these new product lines.

4. Question

What product lines are being adjudicated in the Overland Park facility at this time?

Response: Forms I-601A and applications and petitions associated with international adoptions (I600/I600A, I-800/I-800A, and I-130/I-485 based on an adoption relationship) are being relocated to Overland Park for adjudication. The relocation process is not complete.

5. Question

Have there been any updates to the attached procedures for attorneys to contact the NBC, which were circulated in March 2016?²

Response: The email address for Lockbox support is lockboxsupport@uscis.dhs.gov. The rest of the information contained in the Procedure for Contacting the NBC is still current.

¹ USCIS Posts Q&As from Liaison Meeting Between AILA and NBC (11/3/15), AILA Doc. No. 16011103, Question 1, available at <http://www.aila.org/infonet/uscis-q-and-a-from-liaison-meeting-11-03-15>.

² See Appendix A.

Form I-90 Processing Times

6. Question

As of March 14, 2016, the NBC [reported](#) that its current processing date for I-90 applications was August 2, 2015.³ What is the NBC's goal processing time for adjudicating Form I-90s?

Response: Our goal processing time for I-90s is 3.5 months.

7. Question

In response to a rumor that the NBC experienced a computer glitch which erased information on some applications, USCIS advised AILA that it recently modified the manner in which data is passed between systems, specifically between intake at the lockbox and the USCIS case processing system.⁴ That change resulted in some unexpected issues of data not being successfully passed, though we understand that no data was lost. Please provide an update on the status of reconciling the data, including what product lines were affected, and whether the change affected both ELIS and non-ELIS filings.

Response: As a matter of practice, if the NBC determines that data in our systems which emanates from a Lockbox is not synchronized with the data on the applications we are processing, we collaborate with USCIS' Office of Intake and Document Production and Office of Information Technology to identify the cause of and resolve any inconsistencies. As relates to the subject of the recent communication between AILA and the NBC, the inconsistencies were limited to USCIS' CLAIMS3 system and will be resolved by May 15, 2016. The Adjustment of Status product line was the one primarily impacted. No USCIS ELIS filings were affected. If AILA becomes aware of any cases it believes were adversely impacted, please contact the NBC.

Provisional Waivers (Form I-601A)

Statistics for FY2015 and YTD2016

8. Question

For FY2015 and YTD 2016, please provide the following statistics related to Form I-601A, Application for Provisional Unlawful Presence Waiver:

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

Status	2013	2014	2015	2016 YTD	Grand Total
Receipts	19,726	38,975	48,768	29,676	137,145
Approvals	4,469	27,491	34,287	17,982	84,229
Denials	1,447	11,337	12,570	4,265	29,619

³ National Benefits Center Processing Time Report (3/14/16), AILA Doc No. 16031434, *available at* <http://www.aila.org/infonet/processing-time-reports/nbc/2016/nbc-ptr-03-14-16>.

⁴ USCIS Explains Data Transfer Issue, AILA Doc No. 16040432, *available at* <http://www.aila.org/infonet/uscis-explains-data-transfer-issue>.

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

Status	2013	2014	2015	2016 YTD	Grand Total
RFEs	1,950	17,535	19,295	5,397	44,177

c. The number of I-601A applications denied without issuance of an RFE:
 - This data is not currently captured.

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

Status	2013	2014	2015	2016 YTD	Grand Total
Approvals after RFE Received	677	9,887	12,933	3,773	27,270

e. The number of I-601A applications denied based solely on reason to believe the applicant is inadmissible for reasons other than unlawful presence:

- This data is not currently captured.

f. The number of I-601A applications denied based on “other” reasons:

- This data is not currently captured.

g. The number of I-601A applications the NBC reopened on its own service motion.

- This data is not currently captured.

Expansion of Provisional Waiver Program

9. Question

The comment period for the DHS proposed rule on the Expansion of Provisional Unlawful Presence Waivers of Inadmissibility ended on September 21, 2015.⁵ During our last [engagement](#) on November 3, 2015, USCIS was in the process of reviewing the public comments but could not provide an estimated time frame for when the expansion of the provisional waiver program would be implemented. Could NBC provide an update on the timeframe for implementation at this time?⁶

Response: Unfortunately, we are not able to provide any additional information on the final rule or an estimated time frame for when the expansion of the program will be implemented.

⁵ DHS Proposed Rule on Expansion of Provisional Unlawful Presence Waivers of Inadmissibility, AILA Doc No. 15071509, available at <http://www.aila.org/infonet/copy-of-a-proposed-rule-on-the-expansion-waivers>.

⁶ AILA NBC Liaison Committee Meeting Minutes (11/3/15), AILA Doc. No. 16011103, Question 6, available at <http://www.aila.org/infonet/uscis-q-and-a-from-liaison-meeting-11-03-15>.

10. Question

As of March 14, 2016, the NBC [reported](#) that its processing date for I-601As was October 14, 2015.⁷ What is the NBC's processing goal for I-601A applications? Does the NBC expect I-601A processing times to change with the expansion of the provisional waiver program?

Response: 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.

11. Question

During the fall 2015 liaison [meeting](#), the NBC was unable to comment on resource issues surrounding the expansion of the provisional unlawful presence waiver rule.⁸ Does NBC intend to add extra staff to handle the additional applications that will result from the expansion of the program?

Response: See response to question #10 above.

I-601A Denials and CBP FOIA Records

12. Question

AILA has received reports of I-601A provisional waiver applications that have been denied based on a prior apprehension, despite the fact that CBP FOIA requests yield no record of these incidents. Under what circumstances would an apprehension by CBP at the border show up in DHS databases, leading to the denial of a provisional waiver application, but not in the results of a CBP FOIA request?

Response: Immigration Services Officers review the entire record including various systems checks when determining whether applicants are eligible for the provisional unlawful presence waiver. These checks include the systems utilized by both DHS and DOS. There are many possible scenarios where an apprehension might lead to a denial of a Form I-601A. USCIS is unable to comment on a CBP FOIA request. However, if you have questions on specific cases, please contact the NBC.

Fee Receipts

13. Question

AILA has received reports from members who have been unsuccessful in filing an I-601A application where they do not have an "official" fee receipt from DOS but have some type of alternative evidence that the immigrant visa fee was paid. What instructions are provided to

⁷ National Benefits Center Processing Time Report (3/14/16), AILA Doc No. 16031434, *available at* <http://www.aila.org/infonet/processing-time-reports/nbc/2016/nbc-ptr-03-14-16>.

⁸ USCIS Posts Q&As from Liaison Meeting Between AILA and NBC (11/3/15), AILA Doc. No. 16011103, Question 7, *available at* <http://www.aila.org/infonet/uscis-q-and-a-from-liaison-meeting-11-03-15>.

lockbox contractors regarding evidence of payment of the immigrant visa fee and acceptance/rejection of I-601A applications on this basis?

Response: The lockbox provider has been given a variety of DOS IV Receipts to use as examples of ones that should be considered acceptable. Early in 2016, we recognized that there was a need to update the examples that the lockbox provider was using because we were seeing some additional acceptable formats that had not been previously recognized as paid receipts. At this time, we are not aware of any acceptable formats that are being incorrectly rejected, but anytime an applicant or their representative has a concern with a rejection, we recommend that they send an email to lockboxsupport@uscis.dhs.gov. This will give Intake Operations the opportunity to review the submission and provide case specific feedback.

Advance Parole/ EWIs / 245(i) adjustments / Quilantan

14. Question

AILA members report that NBC is issuing RFEs seeking evidence of the applicant's lawful admission or parole into the U.S. in connection with both Form I-131 and Form I-765 in cases where a Form I-485 adjustment of status application was filed concurrently with those ancillary applications.

- a. Please confirm an RFE requesting this type of information is inappropriate in cases where the I-485 application is filed with evidence of Section 245(i) eligibility.

Response: Yes, it is inappropriate. Please let us know if you experience this.

- b. Please confirm an RFE requesting this type of information is inappropriate in cases where the I-485 applicant has submitted evidence of a *Quilantan* ("wave through") admission to the U.S. on his/her most recent entry to the U.S.?

Response: 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. The evidence requirements that apply generally in immigration proceedings apply to this issue as well.

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).

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.

Interview-Waiver I-485, Application to Register Permanent Residence or Adjust Status

15. Question

At our fall meeting, in response to a question regarding interview waiver cases, the NBC stated that it would look into situations where the field office opts to conduct an interview, notwithstanding an NBC recommendation that the interview be waived. In particular, we had asked about the factors that are considered by a field office when making the determination to proceed with an interview in an otherwise interview-waivable case. Does the NBC have any new information to share on this?

Response: The categories for consideration of interview waiver continue to be:

- Unmarried child of a U.S. citizen
- Parent of a U.S. citizen
- K-1 and K-2 visa holders (fiancée/child of fiancée)
- Unmarried and under age 14 child of Lawful Permanent Resident
- Natives/citizens of Cuba.

NBC provides interview waiver-eligible cases to field offices based on these criteria, but the field office determines if an interview will take place.

USCIS Interoffice Memorandum titled “Revised Interview Waiver Criteria for Form I-485 Application to Register Permanent Residence or Adjust Status” dated January 5, 2005 outlines some reasons for an officer to refer an interview waiver I-485 for interview. USCIS retains the authority to require an interview for any particular application for adjustment of status under section 245 of Act even if the interview may be waived for that type of filing. (Link to memo on uscis.gov:

http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/Archives%201998-2008/2005/i485intwvr010505.pdf)

16. Question

The NBC stated at our last meeting that it is working to bring the processing times for interview-waiver I-485 applications in line with other I-485s (where there is an interview). AILA members report that interview-waiver cases are still routinely taking close to one year to process while I-485s with a field office interview, on average, are processed in about 4 to 6 months. 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.

Response: The processing times for interview waiver Adjustment of status cases are in line with Regular AOS cases. The current cycle time for Regular AOS is 7.2 months.

Affidavit of Support

17. Question

During the fall liaison [meeting](#), the NBC advised AILA that it changed its I-864 checklist so that if the income on the tax return does not meet the poverty guidelines for the household size, the NBC will review evidence submitted of the current sponsor/household income *before* sending an RFE for additional evidence of income/assets or seeking an I-864 from a qualified joint sponsor.⁹ However, AILA members continue to report that the NBC is issuing RFEs in connection with I-864s where the petitioner/sponsor did not earn sufficient income in the previous tax year, despite the fact that the petitioner/sponsor submitted evidence that they are *presently* earning sufficient income. For example, in one case, the petitioner/sponsor was a full-time college student in 2015, and therefore the 2015 tax return reflected an income below the poverty level. However, by the time the petitioner/sponsor filed the affidavit of support she had graduated, was working full time, and was earning an income which exceeded the poverty level. Can the NBC comment on the status of training on this issue and provide additional training if necessary?

Response: NBC changed the checklist in August, 2015 based on this question and suggestion. If the income on tax return does not meet the poverty guideline for the household, we will further check if there is an evidence of current income submitted. If yes, an officer will review the

⁹ USCIS Posts Q&As from Liaison Meeting Between AILA and NBC (11/3/15), AILA Doc. No. 16011103, Question 13, available at <http://www.aila.org/infonet/uscis-q-and-a-from-liaison-meeting-11-03-15>.

sufficiency of current income before sending RFE for evidence of income/assets or qualified joint sponsor.

To show the sponsor's current income met the poverty guideline, the sponsor should provide pay stubs or other documentation of pay for the most recent 6 months, or include a letter of employment from the current employer showing employer's address, phone number, dates of the employment, nature of the job, yearly salary earned, number of hours per week worked, and prospects for future employment.

If you have specific case examples, please provide the case information for us to further review the cases.

Special Immigrant Juvenile (SIJ) Centralization

18. Question

During our last [meeting](#), NBC stated that it established a working group with HQ Field Operations in order to facilitate centralizing SIJ cases at the NBC. The goal was to begin training NBC officers in January 2016 and to start adjudicating cases in February 2016.¹⁰

- a. Please provide an update on USCIS's progress of centralizing SIJ adjudications at the NBC.

Response: USCIS is continuing efforts to develop and implement centralization, and is actively working on all aspects of centralization. This is an important agency priority and we are committed to ensuring that centralization is implemented in a manner that will provide for high quality adjudications. USCIS will provide external messaging when updates surrounding centralization are available.

- b. AILA recommended that interviews be used sparingly in SIJ cases in its December 7, 2015 letter to USCIS.¹¹ What criteria will USCIS rely on in order to determine whether the juvenile will be interviewed?

One of the goals of centralization is to adjudicate SIJ based petitions and applications at the NBC and only refer cases for an in person interview on a case by case basis when such an interview will be necessary to complete the adjudication.

- c. What guidance will NBC be using in considering family court orders?

Response: The NBC will consider the juvenile court orders based on law, USCIS policy, and additional guidance that will be provided through extensive training.

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

¹⁰ USCIS Posts Q&As from Liaison Meeting Between AILA and NBC (11/3/15), AILA Doc. No. 16011103, Question 1, available at <http://www.aila.org/infonet/uscis-q-and-a-from-liaison-meeting-11-03-15>.

¹¹ See Appendix B.

Response: The NBC will have internal procedures in place to track the 180 day adjudication timeframe.

- e. Does the NBC plan on creating a specialized team of officers to adjudicate SIJ petitions?

Response: Yes. SIJ petitions and applications to adjust status will be adjudicated by a designated group of officers who will receive extensive training specific to SIJ based adjudications.

- f. What mechanism will the NBC provide for attorneys to contact NBC if petitions are close to the 180-day adjudication deadline?

Response: The NBC customer service plan regarding SIJs is under development and will be messaged appropriately when centralization is implemented.

EAD Applications for Individuals on Orders of Supervision

19. Question

AILA has received numerous reports of the issuance of RFEs for EAD applicants who are under an Order of Supervision (OSUP). These RFEs request a letter from ICE ERO stating that the client is in compliance with their reporting requirements. AILA initially raised this issue with the NBC during a [meeting](#) on May 9, 2014 where NBC stated that submitting a copy of the OSUP does not in itself indicate compliance by the applicant. The NBC specified that if it is unable to verify compliance in the ICE system, it will request evidence of compliance from the applicant.¹²

We are renewing this issue to note that many local ICE ERO offices refuse to issue OSUP compliance letters due to workload and capacity issues. Furthermore, during an AILA [meeting](#) with ICE on June 19, 2015, ICE stated that compliance with an OSUP is documented by ICE writing instructions and/or reporting dates on the Form I-220B.¹³ ICE further specified that “USCIS personnel generally have access to ICE data systems which document compliance information.”¹⁴

- a. Please confirm that the NBC will accept a copy of the applicant’s Form I-220B with ICE’s instructions and reporting dates as proof of OSUP compliance.

Response: Yes, NBC will accept the Form I-220B as proof. All pages of the Form I-220B must be submitted including recent reporting dates and the next scheduled reporting date.

¹² AILA NBC Liaison Committee Meeting Minutes (5/9/14), AILA Doc No. 14082152, Question 12, *available at* <http://www.aila.org/infonet/nbc-liaison-minutes-05-09-14>.

¹³ AILA ICE Liaison Committee Meeting Q&As (6/19/15), AILA Doc. No. 15082001, Question 14, *available at* <http://www.aila.org/infonet/ice-liaison-committee-meeting-qas-06-19-15>.

¹⁴ AILA ICE Liaison Committee Meeting Q&As (6/19/15), AILA Doc. No. 15082001, Question 14, *available at* <http://www.aila.org/infonet/ice-liaison-committee-meeting-qas-06-19-15>.

- b. Can NBC clarify whether it has access to ICE data systems which document OSUP compliance information?

Response: USCIS does not have direct access to ICE data systems. USCIS does use systems that may include OSUP compliance information from ICE. When accurate and timely information is available electronically, NBC uses this information to avoid sending RFEs or denying an application. However, frequently this generic data is not up-to-date or is not detailed enough to assure the applicant is still eligible for a benefit.

- c. In situations where ICE no longer requires an individual on OSUP to report to ICE, can USCIS verify that individual's OSUP compliance by checking the ICE data systems?

Response: See the response to question 19b.