



Questions and Answers

American Immigration Lawyers Association (AILA) and National Benefits Center (NBC) Meeting May 9, 2014

Overview

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

- 1. Please provide updates on new NBC initiatives that are currently in process or are scheduled. We are particularly interested in: the processing of stand-alone Forms I-130; the processing of interview-waiver eligible Forms I-485 and work allocations assignments to USCIS Service Centers or USCIS Field Offices.**

Response: In terms of Forms I-130: With the recent shipment of 2,400 I-130s to Texas Service Center and 1,240 to Vermont Service Center, the project of transferring stand-alone I-130s to the Service Centers for adjudication is complete. For the I-485 Interview Waiver, currently, USCIS field offices are working I-485 interview waiver cases. Field offices order the I-485 IW cases from NBC and adjudicate to completion in the field. We do not have a timeline for when NBC will begin adjudicating the I-485 IW cases. NBC began planning for centralized processing of Civil Surgeon Designations in July, 2010. The new process includes centralized intake via lockbox, standardized application and adjudication process at the NBC, and a standardized system of record keeping and tracking. The new process went live on March 11th, 2014. As of today, NBC has received 70 I-910s.

- 2. Please provide an update on any key staffing changes that have taken place since our last engagement on October 31, 2013.**

Response: We have had no new assignments at the senior leadership or Assistant Center Director level. After adding a new layer of management beginning several months ago, we now have a total of 24 Section Chiefs on board. These mid-level supervisory employees report to Assistant Center Directors and have two or more first-line supervisors report to

them. All told, since our meeting last May, we have added 78 federal employees to the NBC rolls.

3. Is the Overland Park facility fully operational? What product lines (types of cases) are being adjudicated in that facility?

Response: Overland Park is operational. We continue to evaluate the workloads that ultimately will be located there. Presently, we adjudicate I-90s at Overland Park, and do background checks for N-400s. We have representation of virtually all functions at the facility, including Adjudications, Analysis and Integrity, Fraud Detection and National Security, Records, and Management.

4. What is the status on the NBC's practice of issuing a transfer notice to the applicant and the attorney of record when the Alien File is sent to the National Visa Center or any other office such as a USCIS Field Office for interview or to the National Records Center?

Response: Applicants and attorneys/representatives of record receive approval notices which indicate if an approved petition is routed to the National Visa Center. USCIS does not route A-files to the National Visa Center. Applicants and attorneys/representatives of record should receive interview notices from NBC when an interview is scheduled at the USCIS field office with jurisdiction. This interview notice means the case will be shipped to the field office within days of the notice. NBC's goal is for files (I-485s and N-400s) to arrive at the field office 10 days before the interview. NBC does not mail or produce a separate notice when the file ships. Our system does produce a transfer notice if we relocate an un-adjudicated case from NBC to a service center. If you are not receiving these notices or the language or procedure is unclear, please let us know. We will look into making changes to make them clearer. Currently we do not produce transfer notices for I-485 Interview Waiver or I-485 VAWA cases shipped from NBC to the field office for adjudication. The electronic case information resides in our local system which the field offices have access to so we do not have to "move" or transfer data. We also do not produce transfer notices when A-files are routed to the National Records Center for storage. If you have a specific situation or issue where you think such a notice would be helpful, please let us know and we will look into it.

5. Would the NBC please include the appropriate courier address (for Fed Ex, UPS, etc.) on all Requests for Evidence (RFEs)?

Response: Yes, NBC is adding courier mailing addresses to all Requests for Evidence. We are in the process of updating all our templates.

6. The following questions requested information related to statistics on Provisional Waivers (Form I-601A) for the first half of FY2014:

- a. How many I-601A applications have been filed to date in FY2014?
- b. How many I-601A applications have been approved to date in FY2014?

- c. How many I-601A applications have been issued a Request for Evidence (RFE) in FY2014?
- d. How many I-601A applications were denied without issuance of an RFE in FY2014?
- e. How many I-601A applications were approved after a response to an RFE was submitted in FY2014?
- f. How many I-601A applications were denied based upon a “reason to believe” a ground of inadmissibility may exist?
- g. How many I-601A application has the NBC reopened on a Service Motion?

The following questions are from an email request to us by AILA on 4/29/14:

- 1a. The number of cases reopened due to the change in policy on “reason to believe” that were then approved.
- 1b. The number of cases reopened due to the change in policy on “reason to believe” that were then denied.
- 1c. The number of cases that have been denied solely for lack of extreme hardship.

Response to questions a-g: NBC does not track all of the specific areas requested, so we were unable to capture all statistical information requested. However, we were able to gather the following statistics:

		FY14 Total	Cumulative Total
Intake	Accepted	22,649	42,376
	Rejected	5,801	12,437
	Total received	28,450	54,813
	Average accepted/day	156	145
Biometrics	Scheduled	20,922	40,417
	Captured	20,226	36,911
Case Review	Under review	12,695	-
	Approved	12,166	16,639
	Denied	5,536	7,968
	RFE	7,145	9,208

Response to questions 1a-1c: As a result of the new Field Guidance on the “Reason to Believe” decisions dated January 24th 2014, the National Benefits Center conducted the following:

I-601A RTB Project (as of 6-14-2014)			
Receipt Status	Total	Percentage by type	
Denied prior to Jan. 24 guidance	1,200		
Required reopening	1,190	99.17%	
Reopened	1,190	100.00%	
Approved after	572	46.97%	

reopening			
Denied after reopening	495	40.76%	
RFE after reopening	285	23.95%	
Pending after reopening	123	12.27%	
To be reopened	0	0.00%	

*10 cases had received Immigrant Visas and were therefore not reopened

7. NBC Staffing Commentary on Provisional Waivers (Form I-601A) – Adjudication: Members continue to report receiving denials of I-601A provisional waiver applications without prior issuance of a Request for Evidence (RFE). The regulations for the provisional waiver program state "DHS is committed to issuing RFEs to address applications it receives that are missing critical information related to extreme hardship or if the applications are missing critical information related to whether the alien merits a favorable exercise of discretion." We understand the applicant must establish eligibility at the time of filing and the application "must be properly completed and filed with all initial evidence required by applicable regulations¹ and other USCIS instructions.² DHS anticipated that most RFEs would focus on extreme hardship and any factors that may establish that the applicant warrants a favorable exercise of discretion." The RFE response time is 30 days, thus not a lengthy delay in the overall adjudication process.

a) Would the National Benefits Center please issue a Request for Evidence before denying any Form I-601A?

Response: As stated in the final rule, DHS is committed to issuing RFEs to address applications that are missing critical information related to extreme hardship or applications that are missing critical information related to whether the individual merits a favorable exercise of discretion. USCIS officers also retain the discretion to issue an RFE on any issue or subject matter, if the adjudicator believes that additional evidence will aid in the adjudication. The NBC follows these guidelines for RFE issuance in the I-601A context. Adjudicators are permitted to exercise their discretion to issue RFEs in accordance with these guidelines and based on the particular facts and evidence submitted with the I-601A. Officers always have the discretion to issue a Request for Evidence (RFE) if the evidence in the record raises questions or issues that may affect the decision in a particular case. RFEs are not required but an officer will issue one if warranted.

b) What are the objective criteria an adjudicator considers when evaluating extreme hardship?

¹ Regulations related to the Provisional Waiver of Unlawful Presence are found at 8 C.F.R. §214.7.

² 8 C.F.R. § 103.2(b)(1)

Response: Extreme hardship is a discretionary determination and is not a definable term of fixed and inflexible meaning. The elements to establish extreme hardship are dependent upon the facts and circumstances of each case. The USCIS officer will weigh favorable and unfavorable factors that are presented in the case. The factors that USCIS considers when evaluating Extreme Hardship include, but are not limited to Health, Financial Considerations, Education, Personal Considerations and Special Factors. Please see Page 10 of the I-601A Instructions for more detailed information on these factors.

- c) **If initial evidence of extreme hardship is submitted, how can the officer determine by the preponderance of the evidence and evaluating the totality of the circumstances that there is no possible additional evidence which could be provided by the individual which might cure a deficiency in a Provisional Waiver application?**

Response: Please refer to the response to question 7b above.

8. **If within 60 days of March 18, 2014 a Provisional Waiver applicant (or attorney of record) whose Form I-601A was previously denied for a criminal history based on “reason to believe grounds” or was held in abeyance for “reasons to believe” issues who has not received notice from the NBC on the reopening and review of the Form I-601A, what actions should the applicant (or attorney of record) take to notify the Service of the denial and request a Service motion to reopen?**

Response: We anticipate that all of the cases denied for “reason to believe” prior to the January 24th field guidance will be reopened by that time. However, if there are any remaining cases that you’ve identified, the applicant may write to the NBC at the following address:

DHS/USCIS/NBC
P.O. Box 648005
Lee’s Summit, MO 64002

The representative(s) may write to the above address or send an email to Robert.L.Blackwood@dhs.uscis.gov

9. **NBC Staffing Commentary on VAWA adjustments:** During our October 31, 2013 liaison, we discussed the issue of adjustment of status applications for approved VAWA petitions. Unfortunately, stakeholders continue to report delays in adjustment of status interviews being scheduled at Field Offices after the approved VAWA I-360 file has been transferred from VSC to NBC. The online case status reports only transfer to a “USCIS office” and that the file is in initial review stages. This online status does not indicate if the transfer refers to VSC sending the file to NBC or NBC routing the file to the local district CIS office nor when the transfer was completed.
- a) **Would the NBC please send a transfer notice to the Applicant and Attorney of record once the A file has been transferred to the local office?**

Response: Currently, we do not produce transfer notices for I-485 Interview Waiver or I-485 VAWA cases shipped from NBC to the field office for adjudication. The electronic case information resides in our local system which the field offices have access to so we do not have to “move” or transfer data. We also do not produce transfer notices when A-files are routed to the National Records Center for storage. To produce file transfer notices in these situations would require time, money, and resources. Our systems do not automatically generate these types of notices so we would have to create and produce the notice manually/offline. At this time we do not have the resources or manpower to take this on. If you have a specific situation or issue where you think such a notice would be helpful, please let us know and we will look into it.

- b) **How long does it take the NBC to send a VAWA I-485 case received from VSC to the local office?**

Response: Our goal is to send cases to the Field Office as soon as possible once we have conducted an initial evidence review. We screen for valid fingerprint results, FBI name check results, I-693 medical review and presence of a birth certificate. We also screen for the presence of an adjudicated Form I-360. Resolving discrepancies or incomplete files will delay the process.

- c) **Have you considered a workload reallocation or the outsourcing of personnel to enable the VSC to adjudicate VAWA I-485s thereby avoiding two separate transfers of files (from VSC to NBC and from NBC to Field office)?**

Response: This is not an issue that is in NBC’s purview. We recommend you pursue this initiative at the AILA national level.

- d) **The Vermont Service Center provides e-mail addresses for VAWA inquiries emails which can also be used by applicant or the attorney of record to obtain information on the pending VAWA application. Would the NBC consider establishing a specific e-mail address which the VAWA adjustment of status applicant or the attorney of record could use to obtain information on the pending adjustment of status application?**

Response: We encourage you to use our established e-mail box (MSC.AILALiaison@uscis.dhs.gov) the electronic request system or the National Customer Service Center line (1-800-375-5283) to submit requests which we will answer as quickly as possible.

- e) **Which USCIS office generates the biometrics appointment notices for VAWA adjustment of status cases and at what point during the process are they generated?**

Response: Vermont Service Center generates the biometrics appointment. This is done after a careful review of the address in order to make sure that only a safe address is used,

and that the safe address is actually where the applicant lives, and not the attorney's address. The review is done upon receipt of the file at VSC. If NBC determines that biometrics are not complete, we will schedule the applicant and forward the file when biometrics are complete.

10. NBC Staffing Commentary on Documentation of admission for AOS: A foreign national seeking adjustment of status must prove, by a preponderance of evidence, that he or she presented him or herself for inspection.³ In *Matter of Areguillin* 17 I&N Dec. 308 (BIA 1980), recently confirmed by *Matter of Quilantan*, 25 I&N Dec. 285 (BIA2010), the Board of Immigration Appeals decided (1) An alien who physically presents herself for questioning and makes no knowing false claim to citizenship is "inspected" even though she volunteers no information and is asked no questions by the immigration authorities, and has satisfied the "inspection and admission" requirement of section 215 of the Immigration and Nationality Act, 8 U.S.C. 1255; (2) "Admission" occurs when the inspecting officer communicates to the applicant that he has determined that the applicant is not inadmissible. That communication has taken place when the inspector permits the applicant to pass through the port of entry; and (3) the respondent bears the burden of proving that she in fact presented herself for inspection as an element of establishing eligibility for adjustment of status.

a) To avoid a reject at the lockbox or to avoid a later Request for Evidence, where the applicant does not possess the required initial evidence of admission (i.e., an admission stamp or a valid I-94) which documents would you accept with the filing of an adjustment of status application where the applicant alleges an "Areguillin" entry? Per 8 CFR §103.2(b)(2)(i) could an applicant use secondary evidence and submit *two or more* affidavits by individuals who have direct personal knowledge of the event and circumstances regarding the entry?

Response: Lockbox does not reject I-485s for missing evidence of lawful entry. When the case is received at the National Benefits Center it will go through our standard checklist review process. Our checklist is designed to efficiently identify primary evidence for eligibility for the large volume of Family based adjustment cases that we receive. Currently the checklist is designed to look for I-94 Arrival/Departure Record, passport page with entry stamp from U.S. Immigration Port of Entry, copy of Form I-512 with completed Arrival stamp, copy of Border Crossing Card, I-797 Notice of Action for an Approved I-102 as proof of lawful entry. The initial review of evidence is completed by NBC contractors through an electronic checklist process that does not include discretionary review of documents. Therefore, affidavits submitted with the application are not considered as proof of lawful entry at this point. A RFE will be generated for proof of lawful entry. If the response to the RFE has no evidence of lawful entry, the case will be forwarded to an officer for review. If affidavits for *Matter of Areguillin* or *Matter of Quilantan* are present, the cases will be forwarded to field offices for final decision.

³ See *Inspector's Field Manual* ch. 21. See also, 8 CFR §1235.1(a).

- b) **Should we send such applications “attention supervisor” requesting “insists on filing” with a cover letter and initial supporting evidence of such entry?**

Response: Lockbox does not reject I-485s for missing evidence of lawful entry.

- c) **Will a determination whether to accept or deny such application be made by the NBC or will such applications be forwarded to the appropriate USCIS Field Office for determination?**

-Question used as a starting point for discussion-

11. NBC Staffing Commentary on Employment Authorization Cards: AILA has received several reports that applicants in proceedings have been requested by USCIS to provide further proof that an applicant is in proceedings, including hearing dates. In many cases applicants who were detained by ICE were served Notices to Appear (NTA) in court but ICE has exercised prosecutorial discretion and not filed the NTA in court.⁴ If the NTA has been filed, a hearing date may not be available for months if not years due to current IJ docket backlogs.

- a) **What is sufficient acceptable evidence that an applicant has been placed in proceedings? Is a Fee Receipt for a cancellation application or similar application⁵ acceptable? Is copy of the NTA served on the applicant acceptable?**

Response: A Notice of Hearing in Removal Proceedings from EOIR is evidence that an applicant has been placed in proceedings. Form EOIR-42B (Cancellation of Removal) or similar application for relief should be filed after the applicant is placed in proceedings. Form I-862 (Notice to Appear) only shows the charge and the intent of being placed into proceedings, but it is not acceptable proof that an applicant is in proceedings until/unless the NTA has been served on the court and the respondent receives the Notice of Hearing in Removal Proceedings indicating the time and place of the future proceedings.

- b) **What is the appropriate documentation in support of a Form I-765 to establish that an Applicant’s case has been administratively closed or terminated on grounds of prosecutorial discretion?**

Response: An applicant should submit a hard copy of the Immigration Judge’s order as supporting evidence with the filing of the I-765. We have recently noticed in some cases, that EOIR records may indicate that a case is administratively closed, but the IJ order states that proceedings are terminated. This seems like an issue with proper data entry at the court level when performing post-decisional updates in their systems, but the NBC would follow the actual hard copy order from the IJ order in making subsequent determinations on cases. Therefore, it is very important and helpful to ensure that these orders are sent as initial evidence with case filings.

⁴ See MSC1391298052.

⁵ See MSC1390846510; MSC1390846515.

12. AILA has also received reports of EAD applicants present under a grant of an order of supervision that are requested to send additional evidence beyond the official order itself to prove the supervision order has been granted. Some requests sent by the USCIS go so far as mandating the EAD applicant obtain a written statement by the applicable supervisory ICE officer to prove the legitimacy of this claim. This seems to be inefficient and overly cumbersome when a copy of the order of supervision itself is included in the EAD application and such orders of supervision can be verified by contacting ICE. Obtaining written confirmation from the supervisory officer or any ICE officer is problematic for both the ICE officer and the applicant logistically. What constitutes acceptable evidence of an order of supervision when applying for work authorization under this category?

Response: In order to qualify under the I-765 C18 eligibility category, the NBC must verify that the applicant has a final order of removal and has subsequently been placed on an Order of Supervision Form I-220B. The applicant must also show that they are currently in compliance with the reporting requirements of the Order of Supervision. The NBC will verify compliance through the hard copy submission of evidence by the applicant and/or verify compliance through a check of the Immigrations and Customs Enforcement (ICE) systems. Submitting a copy of the Order of Supervision does not in itself indicate compliance by the applicant. If NBC is unable to verify compliance in the ICE system, the NBC will request evidence of compliance from the applicant. The NBC realizes that there are applicants that report telephonically and/or through contractors for ICE, but the applicant needs to have something in writing from ICE indicating that they are in compliance regardless of their specified mode of reporting as ICE contractors are prohibited from providing any information. The request for evidence is a last resort by the NBC to give the applicant an opportunity to establish eligibility. Ultimately, the burden is on the applicant to provide documentation from ICE indicating compliance since ICE is solely responsible for the issuance and enforcement of Orders of Supervision

13. DACA: Applicants granted Deferred Action for Childhood Arrivals (DACA) will be applying to renew this deferred action and employment authorization.

Response: The below questions are not under NBC jurisdiction. The NBC only adjudicates ICE issued DACA cases and not USCIS DACA issued cases to which the below questions pertain. The Service Centers are responsible for the adjudication of USCIS issued DACA.” For DACA questions involving I-765 or I-131 applications, individuals should contact the appropriate Service Center

- a) How early does USCIS suggest we file DACA renewals?
- b) When renewing the employment authorization, if the applicant also requests an Advance Parole, can the I-131 be concurrently filed?
- c) If the I-131 is concurrently filed with the I-765 will the combo-document (EAD/CP) be issued or will a separate Advance Parole document (I-512) be issued?

d) If the combo-document (EAD/CP) is issued will be validity be limited to 12 months, rather than 24 months?

14. Staffing Commentary on USCIS –AILA Engagements: AILA continues to value the opportunity to speak with representatives of the NBC and NRC to discuss issues of mutual interest to USCIS and its stakeholders. Our committee is interested in learning how we can improve our engagements with you. We welcome your comments, complaints and suggestions. Thank you.

Response: NBC also welcomes the opportunity we have twice a year to engage on topics of interest to both AILA and NBC. Thank you for your commitment to work together on issues to benefit Stakeholders of USCIS. NBC does not have anything to offer at this time regarding improving engagements.

