



Questions and Answers

USCIS National Benefits Center (NBC) and American Immigration Lawyers Association (AILA) Meeting May 15, 2015

Overview

On May 15, 2015, 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: With the end of the shipments of Stand-Alone I-130s last year, the start up of the Civil Surgeon centralization program here at NBC, and the continuation of the shipments of I-485 Interview Waiver cases we are looking to keep ahead of the curve by making sure adjudication of all forms continues to be timely.

2. Question

Please provide an update on any key staffing changes that have taken place since our last engagement on November 18, 2014.

Response: Since our last engagement:

- Deputy Director Terri Robinson was detailed to be Director of the District 15 office in Kansas City.
- Pharah Blackwood served as Assistant Center Director for Records after the departure of Teresa Clum. John Rogers became the new Assistant Center Director for Records 17 May.

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 during the remainder of FY2015? Are you focusing resources on particular areas/product lines?

Response:

- USCIS ELIS will continue to be a challenge for us as we accept I-90 applications. I-90s 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.
- NBC is heavily involved in the drafting of the new I-601A rule. We expect whatever changes come as a result of the new rule to impact NBC.
- We also look forward to continued success meeting the challenges posed by our Service Request management Tool (SRMT) workload. In August of 2013, we had approximately 70,000 SRMT requests pending. With an aggressive plan which included bulk closing some requests where the benefit had already been granted, and by making staffing changes, we were able to reduce this number significantly. Presently, we have less than 5500 SRMT requests pending and are processing these in 14 days or less, and we expect to improve on this.

Processing Times

4. Question

Please provide current processing times for the following:

- a) N-400, Application for Naturalization.

Response: We would ask you to go to uscis.gov and look up the processing time by Field Office, as processing times for N400, including NBC's portion, are rolled up into each Field Offices listed time. There are no separate processing times for NBC.

- b) Stand-alone I-130, Petition for Alien Relative.

Response: Processing times for these can be found at each of the Service Center sections on the uscis.gov web page.

- c) Interview-waiver I-485, Application to Register Permanent Residence or Adjust Status.

Response: The processing times for these are consolidated with I-485 Interview cases and can be found on each Field Office's section on the uscis.gov web page. There are no separate processing times for NBC.

- d) I-601A, Application for Provisional Unlawful Presence Waiver.

Response: The USCIS Cycle Time for the I-601A is 3 months. We are currently processing them at 2.4 months.

Provisional Waivers (Form I-601A)

5. Question

Members report receiving I-601A denials where it appears that evidence of clear, well-documented, and pervasive hardship was submitted. While we understand that the hardship determination is discretionary, and that guidance on the definition of extreme hardship is forthcoming,¹ what steps should a member take now if they receive a denial but believe that key evidence may have been overlooked or given insufficient weight?²

Response: The persuasive weight of evidence, including evidence of extreme hardship, is determined by quality, not quantity. And there is not any “presumption” of extreme hardship. There are no motion or appeal rights for the denial of a provisional unlawful presence waiver. Members who have received a denial decision on a provisional unlawful presence waiver may file a new I-601A with the same initial evidence and may point out how any of this evidence may have been overlooked or given insufficient weight in an earlier decision on a different application. They may, of course, also submit any additional evidence that may have become available since the denial of the earlier application.

6. Question

AILA has observed a number of cases where it appears that little or no weight was given to a psychological and/or mental health evaluation. Denials often note that the evaluator only conducted “a single interview.”³ The individuals conducting these evaluations are typically licensed therapists who are trained to conduct in-depth assessments of patients on their first visit in order to provide a diagnosis and treatment plan based upon that first visit. The initial evaluation is required for insurance purposes. Unlike normal patient visits, which may last less than one hour, the visits for the initial evaluations are lengthy and may include interviews with all immediate family members. Therefore, these initial evaluations are critical assessments as to the issues, symptoms, traumas, and hardships the qualifying relative faces. Given the evaluator’s expertise and training, these evaluations should be given proper consideration. What factors do USCIS officers consider in determining whether this criterion has been met when they review evidence of health-related hardship grounds that include the use of expert evaluations? What training have adjudicators received on this issue?

Response: USCIS officers consider whether the diagnosis has been rendered by a competent mental health professional and whether the diagnosis is for a condition for which the qualifying relative requires ongoing or specialized treatment. The record must establish that the emotional effects of separation from the applicant, as described by the treating physician, are more serious

¹ “DHS Memo on Expansion of the Provisional Waiver Program,” AILA Doc. No. 14112007 (11/20/14) (“USCIS should clarify the factors that are considered by adjudicators in determining whether the ‘extreme hardship’ standard has been met.”)

² See MSC1590013985, MSC1590396912, MSC 1590094870.

³ See MSC1590013985, MSC1590221164, MSC1490533752, MSC1490290215, MSC1391882894, MSC1391650142

than the type of hardship that would normally be expected if the applicant were refused admission.

Officers receive training on the types of hardships which are considered common consequences of visa refusal, and the factors that may exacerbate these hardships, causing them to rise to the level of extreme hardship. With regard to health-related hardship, officers consider whether the qualifying family member requires ongoing or specialized treatment; whether the condition may be exacerbated by the applicant's absence; whether the treatment is available in the country of relocation; how long the qualifying family member will require the treatment; and whether the condition is acute or chronic.

7. Question

If an applicant needs to amend the information provided in a Form I-601A, be it travel history, address, alias or other names used, what is the best method to do so when the Form I-601A is still pending at the NBC?

Response: Applicants who need to amend the information provided in a Form I-601A while it is pending at the NBC should send a request to update their application with the amended information to:

U.S. Department of Homeland Security
PO Box 648004
Lee's Summit, MO 64002

For express delivery, use this address:
National Benefits Center
USCIS
850 NW Chipman Road, Suite 5000
Lee's Summit, MO 64063

Note: Requests to change the applicant's name or date of birth should be accompanied by the applicant's birth certificate or by the biographical page of the applicant's passport.

Adjustment of Status

8. Question

The Request for Applicant to Appear for Initial Interview notice instructs the applicant to bring: "A completed medical examination (Form I-693) and vaccination supplement in a sealed envelope (unless already submitted)." Effective June 1, 2014, USCIS changed its policy limiting the validity period for all Forms I-693 to one year.⁴ Will USCIS amend the notice to reflect its new policy to ensure that applicants bring updated medical examinations, if necessary?

⁴ USCIS Issues New Policy on Form I-693, Report of Medical Examination and Vaccination Record: <http://www.uscis.gov/news/alerts/uscis-issues-new-policy-form-i-693-report-medical-examination-and-vaccination-record>.

Response: At this time, NBC does not plan to change the wording of the notice.

9. Question

Stakeholders report an unusual increase in Requests for Evidence (RFE) for same-sex I-130/I-485 adjustment of status cases soliciting marriage certificates when one was already provided with the original filing.⁵ While this type of RFE is easily responded to, it delays the issuance of ancillary benefits and the adjustment of status interview.

a) Can the NBC review this issue and advise if this may have been a training issue?

Response: There was a process issue which caused unnecessary RFEs to be sent for marriage certificates between December 8, 2014 and February 6, 2015. This issue was identified in the beginning of February and the process was corrected on February 7, 2015.

b) In cases where a valid marriage certificate was clearly provided with the initial filing will the NBC expedite the issuance of work authorization and advance parole?

Response: If a valid marriage certificate was provided and all other initial evidence meets NBC initial review criteria for I-130/I-485, work authorization and advance parole will be adjudicated through normal process in the receipt date order.

10. Question

Please confirm the current procedure for requesting that the NBC accelerate processing of an adjustment of status application when the applicant will be aging out. Unfortunately, requests made through the NCSC are routinely denied as not falling under one of the expedite criteria. Assuming a case is expedited due to imminent age out, what time period should customers expect for the resolution of the case?

Response: NBC does not have a special process set aside for this type of request. If an AILA member becomes aware of a case like this, he or she is encouraged to use the email box set up for these inquiries (nbc.attorneyliaison@uscis.dhs.gov).

Affidavits of Support

11. Question

Stakeholders report that Requests for Evidence (RFE) are being issued erroneously on Forms I-864, including seemingly simple cases and cases that are slightly more complex because they include joint sponsors or a combination of incomes/assets. Specifically, we have seen a large number of RFEs issued when (1) USCIS determines that the income (of the petitioner or joint sponsor) does not meet 125% of the poverty guideline for the household size, when in fact, the evidence submitted clearly shows it does meet the poverty guidelines; or (2) USCIS fails to take into account other evidence of income or assets other than tax returns.⁶

⁵ See MSC1590417028, MSC1590462211, MSC1590425025, and MSC1590388036.

⁶ See MSC1590267403, MSC1590173174, MSC1491577576, MSC1590169413, MSC1491657889, MSC14911334958, MSC1491272868, MSC1491747593 and MSC1590084383.

- a) Has NBC noticed an uptick in RFEs for Forms I-864? What type of training do USCIS Officers receive in reviewing financial documentation?

Response: After reviewing the data of RFEs for the last 10 months, NBC has not seen an uptick in RFEs for Form I-864. NBC utilizes contractors to conduct initial case review through AOS checklist. However, the contractors do not have any adjudicative discretion. Therefore, if the I-864 is more complex or presents a combination of incomes/assets, a RFE might be triggered because the checklist questions are not able to cover every scenario.

NBC has subject matter experts who possess advanced knowledge in the financial and tax field to provide additional information and instruction with regard to determining the adequacy of documentation included with I-864 at the NBC. They also assist to conduct regular in-house training in reviewing financial documentation which include tax forms, financial statements, asset claims, etc.

- b) In cases where it is determined that the initial evidence submitted was in fact sufficient, will the NBC expedite the issuance of work authorization and advance parole?

Response: Once the cases meet the initial evidence requirements, work authorization and advance parole will be processed in the receipt date order.

- c) If the applicant is confident that the petitioner's Form I-864 is sufficient and elects to respond to the RFE by explaining why it is sufficient and why a joint sponsor is not required, please confirm that the NBC will forward the case to the local office for adjudication and ultimate determination of these issues.

Response: NBC is responsible for completing the review of an I-864. A written explanation can be submitted with the RFE response, and NBC officers will take the explanation into account to make a determination on I-864 sufficiency. If the petitioner's I-864 is found insufficient and no joint sponsor has submitted an I-864, the case will not be forwarded to the field. Rather, NBC will deny the Form I-485 because of the insufficiency of the response.

Advance Parole

12. Question

When a customer requests an expedite on a Form I-131, Application for Advance Parole via either NCSC or the Field Office, and USCIS agrees to expedite, how soon can he or she expect a decision on the Form I-131?

Response: We receive requests for expedite processing two ways. We receive some requests via email or phone call from Field Offices as a result of an applicant scheduling an InfoPass appointment. We also receive requests via Service Request Management Tool (SRMT). The response process is similar, however.

We respond to SRMT requests for expedite processing within 5 days of receipt. If our initial response is a request for additional information to justify the expedite processing, we will allow

more time for the applicant or attorney to respond. But for both types of requests, however, once we receive all required information and determine that expeditious adjudication is warranted, the applicant may expect to receive their Advance Parole Document within 7 – 14 days.

Green Card Renewals or Replacements

13. Question

At our November 18, 2014 engagement, Ms. Stanley provided an ELIS update on the soft launch of e-filing for Form I-90. Stakeholders continue to be concerned about processing delays when renewing or replacing a Permanent Resident Card (Form I-90).⁷

- a) Is the ELIS option operational? If not, when does USCIS expect that it will be in place? Will ELIS processing of the I-90 reduce processing times?

Response: Processing of I-90s in USCIS ELIS began March 30 of this year.

- b) Please provide an overview of the I-90 adjudication process so that we can better understand the challenges of adjudicating these applications. If the ELIS I-90 process is in place at the time of our meeting, please also provide an overview of the ELIS process.

Response: The adjudication process in ELIS was designed to mirror the paper adjudication process. The following process describes both.

- Applicant files the I-90 with the Lockbox or Online with e-Filing.
- The Lockbox determines whether the application was properly filed. (i.e. completed application, signature, supporting documents and appropriate fee.)
 - If application was not properly filed, the application will be rejected and returned with fee to applicant.
- Once application is accepted, the Lockbox scans the documents to create electronic data and creates a receipt file for the paper documents to send to the NBC.
- NBC receives the receipt files and starts the pre-processing of these receipts.
- Pre-processing includes:
 - Scheduling ASC (Application Support Center) appointments to have biometrics taken and verify identity of the applicant.
 - Obtaining and reviewing Fingerprint Results,
 - Obtaining and reviewing Background Checks, and
- The receipt files are made ready for adjudication and stored in file room to be delivered to Immigration Service Officers on a first in, first out basis.

⁷ As of January 31, 2015, NBC processing times for all Forms I-90 was reported as July 16, 2014. <https://egov.uscis.gov/cris/processingTimesDisplay.do>.

- The Immigration Service Officer receives the receipt file and reviews for eligibility, confirms identity, system checks and determines whether additional information or evidence is needed or makes a final adjudicative decision.
- If information is not found, an RFE (Request for evidence) will be issued. The File will be held until a response is received or 87 days have expired without response. A final decision will be made at that time.
- The applicant will receive their new I-551 card if application is approved. The applicant and/or their attorney/representative will receive a notice of action letter explaining the status of the application and possible appeal rights, if denied or terminated as appropriate.

c) Please provide the following statistics:

- a. The number of Forms I-90 received (weekly/monthly)⁸

Response: The number of Form I-90 Receipt Files the NBC receives varies and fluctuates from month to month for a variety of reasons. Currently, USCIS is anticipating approximately 783,000 Form I-90 applications for fiscal year 2015. During the first quarter of FY15, USCIS has received 160,937 Form I-90 applications.

- b. The number of staff at the NBC who adjudicate Forms I-90;

Response: NBC currently has 92 officers assigned to the I-90 workload. We are still filling positions and anticipate adding an additional 35 officers to the I-90 workload.

- c. The amount of time from receipt to decision it takes an officer to adjudicate a Form I-90;

Response: The USCIS processing goal is 3.5 months from date of receipt to final adjudication. NBC is working diligently to reach that goal.

- d. The percentage/number of cases where an RFE is issued;

Response: NBC sends out approximately 3,600 RFE (Requests for Evidence) on a monthly basis. The six-month average for RFEs sent is 7.23%.

- e. The percentage/number of cases that are delayed when the applicant fails to attend a biometrics appointment;

Response: NBC does not track the number of cases where the applicant failed to attend a biometrics appointment.

⁸ USCIS Performance Report notes 160,937 Forms I-90 received during the first quarter of FY-2015. AILA InfoNet Doc. No. 15021865 (posted 02/18/2015).

- f. The percentage/number of cases where the Permanent Resident Card is returned as undeliverable or where the Form I-90 applicant indicated the approved Permanent Resident Card was never received.

Response: The NBC received back 18,754 Permanent Resident Cards for the calendar year of 2014. NBC was able to re-mail 20,417 Permanent Resident Cards to the correct applicant address successfully. This total includes carry over from the 2013 calendar year.

USCIS sends the I-551 card to a U.S. address in coordination with the secure mail initiative. The Secure Mail Initiative (SMI) uses the U.S. Postal Service (USPS) Priority Mail with Delivery Confirmation to deliver certain immigration documents (including I-551 cards) in a safe, secure and timely manner. For additional information, please see

<http://www.uscis.gov/news/uscis-improves-delivery-immigration-documents-through-secure-mail-initiative>.

14. Question

In cases where a permanent resident is mistakenly issued a 10-year green card instead of a 2-year conditional green card, Service Centers sometimes refuse to adjudicate an I-751 petition to remove the conditions on residence until the error is corrected through the filing of an I-90. Please confirm that the NBC will adjudicate the I-90 even if the applicant is no longer a conditional resident at the time of filing and/or adjudication.

Response: NBC will deny the I-90 application. We are unable to issue an I-551 card with expired validity dates. NBC is unable to address the issue with the I-751, Petition to Remove Conditions on Residence. Please contact the appropriate Service Center (California or Vermont). The card would not be produced as the expiration date would have already passed by the time a request for correction is filed with an I-90, if we are understanding the question correctly

USCIS – AILA Engagements

15. Question

AILA continues to value the opportunity to speak with the NBC to discuss issues of mutual interest. Our committee is interested in learning how we can improve our communications with you and what recommendations you can provide to facilitate your processing of cases. 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.