



February 24, 2011

Executive Summary

USCIS Field Operations Directorate Stakeholder Meeting

Background

On October 6, 2010, the U.S. Citizenship and Immigration Services (USCIS) Field Operations Directorate (FOD) and the Office of Public Engagement (OPE) hosted the Field Operations Stakeholder Engagement. USCIS provided updates and answers to stakeholder questions. Present during the meeting were headquarters, regional, and district leadership from the FOD. At the beginning of the meeting, USCIS stated that Debra Rogers would be leaving USCIS to become the Deputy Ombudsman for the Office of the CIS Ombudsman at Department of Homeland Security (DHS) Headquarters. Donald J. Monica will be Acting Associate Director for FOD. Mr. Monica provided a brief introduction and addressed questions received from stakeholders prior to and during the meeting.

Principal Themes

- **Haiti**

USCIS continues to review humanitarian parole and deferred action requests on a case-by-case basis. USCIS is not considering a blanket policy to authorize parole for Haitians with approved immigrant petitions and is working diligently to process deferred action requests filed by Haitian nationals. When a deferred action request is received, both the local field office and district office review the case. After review, a recommendation to approve or deny a request is made and forwarded to the regional office. The regional office issues a final decision and the individual requesting deferred action is properly notified. USCIS is in the process of drafting guidance that must first go through the internal clearance process. Current guidance of the deferred action is available online in the Adjudicator's Field Manual (AFM).

- **Adjustment of Status**

Stakeholders had several questions about adjustment of status for specific case types: Temporary Protected Status (TPS) grantees who initially entered the United States without inspection (EWI) and employment-based cases relocated to field offices. First, USCIS reminded stakeholders that an individual seeking adjustment of status must meet all the requirements of Section 245 of the Immigration and Nationality Act (INA) that are applicable in his or her circumstances. The time period that an individual has been, or was, in Temporary Protected Status (TPS) will be considered as if the individual was in a lawful non-immigrant status during that time. *See* INA 244(f)(4). However, if the individual entered without inspection (EWI) and/or had periods of unlawful presence prior to or after being granted TPS, he or she could be ineligible for adjustment of status under INA 245 or need to obtain a waiver of certain

grounds of inadmissibility. *See* INA 245(a); 245(c)(2); *Serrano v. Holder* 2010 WL 2010007 (N.D. Ga. 2010). USCIS is not aware of any discrepancy between our interpretation of the law and any binding precedents from the Executive Office of Immigration Review (EOIR) or the Federal courts.¹ However, USCIS asked that if there are in fact discrepancies, stakeholders bring case-specific examples to the Agency's attention. In the event that EOIR or the courts reach a different interpretation of the law in binding precedents, USCIS will provide stakeholders with an update and will modify its adjudications accordingly.

Field Operations is also in the process of instituting new case management procedures that will allow employment-based Form I-485s relocated to a field office to be captured in a monthly inventory. The National Benefits Center is prepared to start this process in the next few months. Field Operations will also look into ways that they might be able to consolidate the inventory generated by these new case management procedures with the quarterly inventory published by the Service Center Operations Directorate.

Stakeholders also requested that USCIS look into pre-adjudicating I-485s and granting approvals without interviews. At this time, USCIS presumes that all cases forwarded to Field Offices require an interview and notes that oftentimes adjudications are not done until the time of interview.

- **Naturalization**

USCIS addressed concerns regarding the naturalization application process from filing to interview to final adjudication. USCIS acknowledged stakeholder frustration that applicants who file for naturalization too early are being notified of denial months after filing, and indicated that they are working with Lockbox Operations to remedy this issue. Rejecting naturalization applications because the applicant had not been a permanent resident for the required eligibility period is one of the criteria that the Lockbox reviews when accepting applications. Applications that do not meet this criterion should be rejected. It should be noted, however, that the Lockbox does not review whether applicants have lived in the jurisdiction in which they are filing for at least three months as required by law. *See* INA 316(a). Applications filed prior to accruing three months residence within the State or district of the Service in which the applicant currently resides will be denied. Applicants are reminded to utilize the tools that USCIS has available, such as the Guide to Naturalization, the Citizenship Resource web pages, and the N-400 Eligibility Worksheet, to help determine if they are eligible to apply for naturalization.

USCIS addressed issues of removability, outstanding warrants, and medical exemptions. The FOD noted that if, during the course of a Form N-400 adjudication, it is determined that an applicant is removable, DHS (either through USCIS or ICE) may exercise its prosecutorial discretion to place the applicant in removal proceedings by issuing the applicant a Notice to Appear (NTA), Form I-862. Once removal proceedings are pending, USCIS will generally hold adjudication of the applicant's Form N-400 in abeyance until a final administrative decision is made in the removal proceedings. One exception is in the 9th Circuit where, based on circuit precedent, USCIS will deny the application when removal proceedings are pending. Field Operations recognizes that there are various issues that may arise and that sometimes these issues are controlled by district offices. The FOD intends to establish national guidance that should help standardize the process to the extent possible. Additionally, USCIS indicated that it is not likely it will notify an applicant or representative of outstanding warrants prior to a naturalization interview.

¹ USCIS notes that, more than a month after the October 6, 2010, Engagement, the Board held in *Matter of Sosa Ventura*, 25 I&N Dec. 391 (BIA 2010) that a grant of TPS is a temporary benefit, and that the grant does *not* provide enduring relief from the alien's underlying illegal status.

Immigration Service Officers (ISOs) are not authorized to question medical diagnoses provided by a licensed medical professional on the Form N-648, Medical Certification for Disability Exceptions. However, ISOs must verify whether the medical professional has established the necessary nexus between the applicant's medical condition and his or her inability to comply with the English and/or civics educational requirements for naturalization.

If an applicant or representative feels that the ISO is improperly reviewing or questioning the Form N-648, the applicant or representative may request to speak to the ISO's supervisor. Case-specific questions and concerns regarding the Form N-648 can also be raised by calling the National Customer Service Center (NCSC) at 1-800-375-5283 or visiting a local field office with an InfoPass appointment.

In addition, USCIS conducted a complete review of the Form N-648. As part of the review process, USCIS held engagement sessions with stakeholders to get the feedback and suggestions regarding how best to improve Form N-648 and the Form N-648 adjudication process. On February 1, 2010, USCIS published a draft Form N-648 in the Federal Register and published a final version of the new form in December 2010. USCIS believes that the new Form N-648 is more comprehensive and easier for medical professionals to complete and for naturalization applicants to understand.

USCIS intends to provide general training on the new Form N-648 for interested stakeholders, including medical professionals. The training will introduce the new form and help answer stakeholders' questions regarding how to complete the new form. Training for USCIS Supervisory Officers will occur in January 2011 followed by a requirement that all USCIS officers who handle N-648's be trained within 30 days of the supervisory training.

USCIS reminded applicants that they should use their legal name when completing the Form N-400, Application for Naturalization. An applicant's legal name is the name on his or her birth certificate unless it has been changed after birth by a legal action such as marriage or a court order.

Finally, stakeholders indicated that they were worried about delays in adjudication following the naturalization interview. Pursuant to Section 336(b) of the Immigration and Nationality Act (INA), USCIS has up to 120 days from the date of an applicant's naturalization interview to make a final decision on the applicant's N-400. In most instances, USCIS is able to make a decision in less than 120 days. However, in some cases, USCIS requires the full 120 days to make a decision. If USCIS is unable to make a final decision within 120 days from the date of the naturalization interview the applicant may apply to the appropriate U.S. District Court for a hearing on the matter. USCIS does not consider a naturalization application delayed if it is still within the 120 day period. Applicants and/or representatives are welcome to make case status inquiries; however, this is not likely to speed up the adjudicative process if USCIS is within the 120 days.

- **Special Immigrant Juvenile Cases**

Stakeholder expressed some confusion about the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008. TVPRA 2008 Section 235(b)(1) authorizes Health and Human Services (HHS) to provide care and custody of all unaccompanied alien children. TVPRA 2008 Section 235(d)(4) provides that certain minors granted special immigrant juvenile status by USCIS are eligible for placement and services available to refugee children. The Office of Refugee Resettlement (ORR) at HHS administers these assistance programs for refugee children. More information about placement and services can be found on the HHS website, Administration for Children and Families, click on "ACF Programs" and then "ORR" or visit the following link: <http://www.acf.hhs.gov/programs/orr/>.

- **Contact with USCIS**

Over the past several years, USCIS has instituted tools to assist customers in obtaining information about their case status. These tools include “My Case Status,” the NCSC, and InfoPass appointments. All customers, including attorneys, should use these tools for general case status inquiries.

Please note that “My Case Status” online is designed to reflect certain actions that are updated in our national systems. The system currently has limited capabilities; it does not receive updates nor can it notify applicants regarding cancelled interviews.

The Customer Service Directorate (CSD) is currently working on revising attorney and BIA-accredited representative access to Tier 2 customer service representatives at the NCSC. This will allow attorneys and representatives to bypass the Tier 1 contractor representatives and have direct access to Tier 2 USCIS ISOs. In addition to this service, USCIS reminded stakeholders that the NCSC uses the Service Request Management Tool (SRMT) to track some inquiries or requests and that this tool may be useful for future inquiries or case history.

InfoPass appointments can be used for case status and general inquiries. Generally, applicants should wait 30 days to schedule a second appointment if an application is outside processing times. On the day of the appointment, an applicant or representative should not have to wait more than 30 minutes beyond their scheduled appointment time. If you find this is not the case, please bring it to the attention of local leadership.

Stakeholders also noted that some locations previously allowed individuals to schedule fingerprint appointments on the spot when the field office was co-located with an Application Support Center (ASC) and other locations allowed attorneys to discuss multiple cases during a single InfoPass appointment. The FOD stated that they would look into the self-scheduling concept for fingerprint appointments, but due to technical limitations and USCIS management structure this may not be possible. Field Operations also indicated that they want to ensure that everyone has equal access to USCIS through InfoPass. This requires that USCIS maintain appointment times (currently scheduled 20 minutes apart) and efficiently manage the daily schedule of appointments.

Finally, most Field Office Directors supply local contact information at their regular American Immigration Lawyers Association (AILA) and stakeholder meetings for urgent matters. USCIS is aware that processes differ by office and that USCIS needs to review local liaison contact and consider centralizing inquiry processing through the Service Request Management Tool (SRMT). This includes reviewing local liaison contact and centralizing inquiry processing through the Service Request Management Tool (SRMT).

- **Tech Services**

Stakeholders were concerned about the technical capabilities of some USCIS systems. This included processing times for certain cases and email notification of interview appointment cancellation.

USCIS is aware that family-based adjustment of status cases at district and field offices are not reported on the Processing Times drop-down menu and is working to correct it. Family-based adjustment processing times for field offices will be included on the dropdown menu in the future. This information can, however, be found by clicking on the “Check Processing Times” link on the left side of the USCIS home page at <https://egov.uscis.gov/cris/processTimesDisplayInit.do>.

Currently, Form G-1145, E-Notification of Application/Petition Acceptance, is used only to electronically notify an applicant or petitioner of acceptance of an application or petition. The form does not provide email notification for interview appointment cancellation.

- **Policies and Procedures**

There were a number of stakeholder queries regarding USCIS policies and procedures. These included: appointments, biometrics, proof of employment authorization, complaints against USCIS, and local acceptance of documents. Additional information is provided below.

- *Rescheduling Appointments:* USCIS stated that information on how to reschedule an appointment can be found on appointment notices and that an applicant or representative may also request that an appointment be rescheduled by calling the NCSC.
- *Reentry Permits:* The current policy for the Form I-131, Application for Travel Document, requires that an applicant for a reentry permit be in the United States at the time of filing and that applicants between the ages of 14 and 79 submit biometrics. A biometrics appointment will be scheduled at an Application Support Center (ASC) that has jurisdiction over the address listed in Part 1 of the application. With the exception of some military-related cases, applicants do not have the ability to choose which ASC they visit, but this is something that USCIS is reviewing.
- *Letters as Proof of Employment Authorization:* Proof of employment authorization continues to gain visibility in USCIS as an issue of concern for stakeholders. USCIS is aware that some states' Departments of Motor Vehicles (DMVs) do not accept Employment Authorization Document (EAD) cards as a form of identification. DHS is working with DMVs to look more closely into the issue. However, USCIS will not issue documents, such as an informal letter, that may be used as a form of identification or as evidence of employment authorization as a letter does not contain the required security features. A list of documents evidencing employment authorization that are acceptable to present to an employer for completion of the Form I-9, Employment Eligibility Verification Form, is available on page 2 of the form. Form I-9 may be found on the USCIS website under the "Forms" section at <http://www.uscis.gov/files/form/i-9.pdf>.
- *Rude or Unprofessional USCIS Staff:* USCIS is a customer-service agency; employees should treat all customers in a professional, respectful manner. If applicants or representatives believe that they or someone they represent has been treated improperly, please raise the concerns with a USCIS supervisor that same day so that local leadership can identify and address the issue as quickly as possible. USCIS Headquarters also welcomes concerns to be raised through Field Operations or the Office of Public Engagement. If USCIS does not provide a satisfactory response, waiting areas at USCIS offices also have posted information on how to submit a complaint to the DHS Office of Inspector General. Contact information for Field Operations, the Office of Public Engagement, and the DHS Office of Inspector General can also be found on USCIS's website.
- *Local Acceptance of Documents:* USCIS agrees that the process for accepting hand-delivered documents should be standard through all our field offices and we are reviewing the issue. Currently, local policies regarding if and when documents may be hand-delivered differ from office to office, as not all offices have the facilities or the personnel to accept documents on a walk-in basis. USCIS currently recommends that applicants check with their local office to determine how it would like documents submitted.

- *Requests for Evidence (RFE)*: Stakeholders indicated that some field offices are issuing RFEs with limited time to respond (e.g. 15 days; 30 days to get documents from abroad, then issued a denial). Some RFE response times are prescribed in the regulations while others are established by policy. For example, if USCIS receives derogatory information after a naturalization applicant has been interviewed, but before the applicant has taken the oath of allegiance, the applicant will have 15 days to respond. *See* 8 CFR 335.5. If an office issues a Notice of Intent to Deny, by regulation, the applicant or petitioner will not be provided more than 30 days to respond. *See* 8 CFR 103.2. If you believe that an RFE was issued improperly, please bring it to the attention of the office that issued the RFE.