



Questions and Answers

USCIS Service Center Operations – American Immigration Lawyers Association (AILA) Teleconference

January 19, 2011

Overview

On January 19, 2011, the USCIS Service Center Operations Directorate (SCOPS) hosted an engagement with AILA representatives. USCIS discussed issues related to the handling of I-129 duplicate copies, R-1 visa classification, Notices of Intent to Deny (NOID) versus Requests for Evidence (RFE), the Application Support Center (ASC) in the Commonwealth of the Northern Mariana Islands (CNMI), case transfer and receipt notices, and biometrics for re-entry permits. The information below provides a review of the questions solicited by AILA and the responses provided by USCIS.

Questions and Answers

Question 1: Has SCOPS posted its own Minutes from the December 8, 2010 SCOPS call yet? If so, where on the USCIS website can the document be found?

Response: The minutes from the December 8, 2010 AILA-SCOPS teleconference may be found on the “Notes from Previous Engagements” page under the “Outreach” tab at <http://www.uscis.gov>.

Question 2: Is there any update respecting SCOPS attempts to resolve the issues raised on the prior agenda respecting timely updating of status in the SAVE database?

Response: SCOPS believes that the issue was resolved since SAVE team had worked on the interface issues. If you are still seeing a problem, please bring it to the attention of the Enterprise Services Directorate.

Question 3: Is there any update respecting how duplicate copies of H and L filings intended for KCC will be handled in COS or EOS cases when the beneficiary will not be applying for a visa at the consulate until some time well after approval of the COS or EOS?

Response: SCOPS reached out to the service centers and received confirmation that duplicate copies of the petition are forwarded to the KCC upon approval regardless of whether the petition is a request for consular processing, EOS or COS as long as a duplicate copy is submitted. AILA may wish to contact the KCC for questions on how KCC handles the duplicate petitions. If AILA has examples of petitions

where a duplicate copy was included in the filing, but not forwarded to the KCC upon approval, please provide SCOPS with the receipt number and we will look into the case.

Question 4: AILA has noted a problem respecting adjudication of R-1s now that every R-1 requires a petition, which may be resolved with an update to AFM Chapter 30.2. Chapter 30.2 of the AFM instructs adjudicators to provide a “two-step” adjudication analysis for certain types of I-129 petitions, such as H-1B, L, O and P petitions, where a change of status or extension of stay is requested. The AFM provides that the adjudicator is to make separate decisions on the petition itself and on the requested action with respect to the beneficiary. Presently, the AFM does not direct the “two-step” process for R petitions. (We believe that this is because, under prior regulations, an approved petition was not required for R status.) Therefore, adjudicators will deny the I-129 petition where the beneficiary is ineligible for a change of status or extension of stay, rather than approve the petition and deny the change of status or extension of stay request. AILA requests that SCOPS revise the standard operating procedures and the AFM to instruct adjudicators to render separate decisions on the petition and on the requested action.

Response: Since the religious worker final rule became effective upon publication on 11/26/08, the adjudicators have been applying a “two-step” adjudication analysis for I-129 R petitions and issuing split decisions by approving the R petitions and denying the change of status or extension of stay requests as appropriate. SCOPS appreciates AILA for pointing out the oversight in AFM Chapter 30.2 and will update it accordingly. However, the National Standard Operating Procedures (SOP) for I-129 R will not be updated to reflect this change to the AFM as the SOP does not contain such error. If AILA has examples where an I-129R was adjudicated improperly, please provide us with the receipt number and we will review.

Question 5: AILA is concerned that Service Centers may not be properly applying the provisions of the AFM and other Service guidance that relate to when to issue an RFE and when to issue a NOID. It appears NOIDs are being issued when it would be more appropriate to request additional evidence. Could SCOPS clarify for AILA – in simple terms – when the Service deems it appropriate to issue a NOID rather than an RFE?

Response: Both an RFE and NOID are notice of ineligibility. Pursuant to 8 CFR 103.2(b) and Section 10.5(a) of the Adjudicators Field Manual, an RFE may be issued when initial or additional evidence are missing. A NOID may be issued where USCIS has evidence of ineligibility or derogatory information. A NOID may also be issued based on a mandatory basis for denial.

Question 6: AILA would like to know whether the ASC in CNMI can do biometrics for individuals who are not residents of CNMI. If so, could this ASC be added to the USCIS website list of ASCs?

Response: ASCs are under the jurisdiction of the USCIS Enterprise Services Directorate (ESD), not SCOPS. ESD has informed us that the ASC in Saipan, CNMI can do biometrics for all USCIS business. This ASC will be found on the USCIS website by entering a CNMI zip code, but AILA's concern is properly raised given that since it cannot be located using the two alternative methods involving (1) clicking on a U.S. map or (2) a drop down menu of states and territories, the website is not as user-friendly to persons seeking to locate ASC services in the CNMI as it is to persons in other U.S. jurisdictions. ESD appreciates AILA bringing this to its attention and will work to improve the website accordingly.

Question 7: AILA members are again reporting that they are not receiving case transfer notices even though the attorney has a G-28 on file. Could SCOPS please advise whether it is Service policy to always provide a copy of the case transfer notice to the attorney if there is G-28 on file? On a related matter, AILA members are also reporting not getting receipt notices from the Arizona lockbox for renewal filings

of I-131s and I-765s (cases involving pending I-485s) even when a newly-signed Form G-28 is submitted with the filing. Could SCOPS advise on whether this is merely a glitch or some other problem so that AILA members can modify their practices – if necessary – to ensure getting receipts?

Response: No transfer notices are sent out for the transfers of I-751 and I-829. The electronic system is simply updated as ready for interview scheduling by the officer at the Service Center and then it is relocated to the District Office. For those two form types, the only notification that will be sent out to an attorney of record is an interview notice once the interview has been scheduled at the District Office. For all other cases, transfer notices should be sent to the attorney of record. Please contact the National Customer Service Center if you have cases other than I-751 and I-829 where the attorney of record is not receiving the transfer notices.

Regarding the issue of receipt notices from the Arizona Lockbox, the Lockbox is not aware of any glitch or systemic problem that would result in an attorney not receiving a receipt notice if the applications/petitions are accompanied by a valid G-28. If you have an example, you may send the case specific information to lockboxsupport@dhs.gov.

Question 8: AILA would like to re-raise the issue of biometrics for re-entry permits. The current procedure—whereby applicants must be physically present to file the re-entry permit application and then wait in the U.S., or make a separate trip to the U.S. in order to have the biometrics done—is extremely burdensome for employees who have been assigned abroad by their employers. The process is especially difficult with respect to extensions of re-entry permits, as it essentially requires two trips back to the U.S. Examples outlining the burdens on applicants and their employers have been provided in the past. AILA asks USCIS to revise the process to capture biometrics for re-entry permit applicants to reduce the burdens on applicants and their employers. For example, would the Service consider implementing a procedure whereby the applicant could have the biometric notice issued with the receipt, or possibly have the biometric done simply based on the receipt? (Some ASCs already allow the applicants to have biometrics taken simply based on a receipt with proof of an urgent need to travel.) AILA would like to see this become formalized nationally. AILA does not believe this would create an overwhelming demand or burden on ASCs because the number of individuals filing re-entry permits is relatively low.

Response: Section 223(a) and (b) clearly contemplate that an LPR apply for a re-entry permit while physically in the United States. INA section 223(b) further indicates that a re-entry permit is not “renewable”. As a result, a request for a renewed re-entry permit cannot be made from abroad.

Page 6 of the Form I-131 instructions already provide a means for requesting expedited handling of the ASC appointment notice. SCOPS has referred this question to the Application Support Division of the Enterprise Services Directorate so that it may consider whether it would be feasible either to merge the ASC notice into the filing receipt or to make the filing receipt itself sufficient for ASC processing.