



# Questions and Answers

October 14, 2009

## Consolidated Processing of Successor-in-Interest Petitions, Tuberculosis Testing Requirements, I-140 Filing Tips, and Fingerprint Issues

### Questions and Answers

**Q. The August 6, 2009 Neufeld Successor-in-Interest Memorandum provides an option for service center directors to elect to accept consolidated evidence for multiple filings based on the same transfer and assumption of ownership. Under the Neufeld Memo, petitioners are instructed to initiate a request for consolidated processing through the National Call Center. The Neufeld Memo further indicates that the decision to grant a request for consolidated case processing rests solely with the service center director(s) with jurisdiction over intended place of employment listed in the I-140 petition. Please confirm that the National Customer Service Center (NCSC) scripts have been updated to permit this type of request.**

A. Yes, the NCSC scripts have been updated to permit this type of request.

**Q. What should petitioners do if the NCSC refuses to accept a request to consolidate case processing? May they email the service center directly?**

A. NCSC will not refuse to accept the request. However, the request may not be ultimately approved by the service center director. The customer should not email the service center directly.

**Q. Once the request to consolidate case processing has been initiated, how long does USCIS anticipate it will take before the decision will be rendered by the particular service center director(s)?**

A. Customers should receive a response within 30 days.

**Q. How can petitioners follow up on requests for consolidating case processing if there has been no response? Must they call the NCSC, or may they follow up directly with the particular service center using the email follow-up addresses?**

A. If more than **30 days have passed** since the customer contacted the NCSC and the issue has not been resolved or explained, then the customer can email the proper USCIS Service Center to check the status of the request.

Nebraska Service Center: [ncscfollowup.nsc@dhs.gov](mailto:ncscfollowup.nsc@dhs.gov)

Texas Service Center: [tsc.ncscfollowup@dhs.gov](mailto:tsc.ncscfollowup@dhs.gov)

It is recommended that the customer take note of the following information during the initial inquiry: the name and/or id number of the NCSC representative, the date and time of the call, and any service request referral number, if a service referral on a pending case is taken.

**Q. Have specific criteria for evaluating consolidated processing requests been developed by HQ and communicated to the service centers, or will each service center be asked to develop its own criteria for acceptance of consolidated processing requests?**

A. The August 6, 2009 Neufeld Successor-in-Interest Memorandum outlines the criteria to be used. In short, the center director(s) will determine if the consolidated processing request can be granted based upon whether such a request would adversely impact the service center's ability to timely address other pressing work priorities.

**Q. The August 6, 2009 Neufeld Successor-in-Interest Memorandum states that the field guidance applies to "all I-140 petitions pending or filed after the date of this memo...." Please confirm that timely-filed motions to reopen/reconsider and appeals that were pending at the Service Centers and the AAO prior to the issuance of the memo will be considered "pending" and will be adjudicated under its provisions. Since many of these cases have been held in abeyance awaiting this guidance, what is USCIS anticipated timeline to complete adjudication?**

A. Motions and appeals that were still pending at the service centers at the time of the issuance of the memo will be adjudicated using the Successor-in-Interest (SII) guidance provided in the memo. The service centers are actively working the cases that were held in abeyance awaiting this guidance and expect to complete the review of these cases by the end of October. In some instances, an RFE or ITD may be issued subsequent to the review rather than a final decision in the case.

**Q. Frequently Asked Question (FAQ) #10 in the tuberculosis component of the Technical Instructions for completion of Form I-693 indicates that a Civil Surgeon can no longer sign a medical exam for a pregnant woman who has a positive skin test for TB but refuses the chest X-Ray. In the past, the physician would sign the medical exam and note that the X-Ray was not performed. A RFE would then be issued by USCIS after the child was born to permit the completion of the exam. The new policy seems to preclude the filing of I-485 applications for pregnant women as Civil Surgeons are no longer able to sign off on any part of the medical exam. AILA is concerned that this new policy creates an unintended bar to immigration benefits for pregnant women, and urges the Service to revert to its previous approach in this situation, specifically, permitting the Civil Surgeon to sign the medical exam with the notation regarding the X-Ray, allowing the I485 application to be filed, with provision for submission of the X-Ray results in response to an RFE post-partum.**

A. Section 232(b) of the Act gives to the Secretary of Health and Human Services, and not to DHS, the authority to prescribe the rules governing medical examination of aliens. USCIS cannot permit the civil surgeon to sign a Form I-693 in violation of Department of Health and Human Services regulations at 42 CFR Part 34 and the Technical Instructions as adopted by the Center for Disease Control (CDC).

**Q. AILA thanks USCIS for the Questions and Answers on Filing and Processing Procedures for Form I-140 Immigrant Petition for Alien Worker published on June 25, 2009. Please clarify what should be done if an incorrect visa category is selected in Part 2 of the Form I-140.**

A. Under the I-140 filing tips, if a petitioner realizes that a mistake has been made on the visa category requested (either their own clerical error or Service Error) when the receipt notice is received, the petitioner or Form G-28 representative is directed to contact the NCSC to request a correction.

**Q. Have the NCSC scripts been updated to permit requests for corrections to Form I-140 if a mistake has been made on the visa category requested?**

A. Yes, NCSC scripts have been updated to cover this issue.

**Q. Once the NCSC has taken the request for a correction to Form I-140, should the requestor anticipate receiving a confirmation of the request either through mail or email?**

A. The NCSC will forward the request to the service center with jurisdiction over the petition. A confirmation of the request will not be provided. The request will be addressed during the adjudication of the petition.

**Q. When a correction is made to the visa category on an I-140, will a new receipt notice be generated to indicate the correct visa category, or will some other written documentation be produced as evidence that the visa category has been corrected?**

A. USCIS will not issue a new receipt notice. The service center will note the decision regarding the requested classification change through the issuance of an RFE or a final decision in the case.

**Q. Will USCIS afford petitioners and their accredited representatives an opportunity to submit additional evidence in connection with a Form I-140 visa category correction request in addition to the information provided to the NCSC?**

A. Petitioners may supplement the record of proceeding with additional evidence and the evidence will be considered as long as it is received prior to the rendering of a final decision in the case. It is helpful if a copy of the case receipt notice is placed on the top of the evidence upon submission.

**Q. Members report that applicants do not learn of the need to obtain good conduct certificates/police certificates because of unsuccessful fingerprint capture until multiple fingerprint appointments have been scheduled and completed and interviews are scheduled solely on the basis that the fingerprint information is unreadable. This situation causes unnecessary delay and a waste of resources for both USCIS and applicants. AILA requests USCIS consider implementing a uniform policy to request good conduct/police reports from the applicants earlier in the process once it is discovered that the fingerprint information is unreadable.**

A. A determination that an applicant's fingerprints are unclassifiable requires two fingerprint appointments. Often, fingerprints rejected after the first appointment return a valid result after the second appointment. This occurs in roughly half of cases involving an initial reject. Per the January 5, 2005 memorandum titled, "Revised Interview Waiver Criteria for Form I-485 Application to Register Permanent Residence or Adjust Status," when an applicant's fingerprints have been twice rejected as unclassifiable, the adjudicator must request that the applicant provide a five-year certification of good conduct from local law enforcement and take a sworn statement from the applicant. In cases where the applicant's fingerprints have twice been rejected as unclassifiable, the Service Center will relocate the file

to a field office with a memo to file stating that the case is being relocated because the applicant needs to provide police clearances and execute a sworn statement.

The May 1, 2006 Office of Field Operations I-485 Standard Operating Procedures, version 2.1, indicates that applicants with twice rejected fingerprints are ineligible for an interview waiver and therefore must appear in person to provide police clearances and a sworn statement. That SOP further indicates that *“If the fingerprint response shows two current Rejects, prepare Record of Sworn Statement (Form I-263), and request police clearances for all residences within the U.S.”* When the field office calls the applicant in for an interview, the field office notifies the applicant that he or she must bring the required police clearances to the interview. Given that half of all fingerprints rejected after the first appointment return a valid result after the second, coupled with the fact that for reasons of public safety and national security individuals with twice rejected fingerprints must appear in person to provide police clearances and a sworn statement, we disagree with the recommendation that police clearances should be required earlier in the background check process.