U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Customer Service and Public Engagement Directorate
Washington, DC 20529

U.S. Citizenship and Immigration Services

Questions and Answers

USCIS – American Immigration Lawyers Association (AILA) Meeting
April 11, 2013

Overview

On April 11, 2013, USCIS hosted an engagement with AILA representatives. USCIS discussed issues related to waivers of inadmissibility, Deferred Action for Childhood Arrivals, the USCIS Policy Manual, as well as other issues. The information below provides a review of the questions solicited by AILA and the responses provided by USCIS.

Provisional Waiver

Question 1: In the Supplementary Information to the final rule on provisional unlawful presence waivers, USCIS states:

> If USCIS determines that there is reason to believe that the alien *may* be inadmissible to the United States at the time of his or her immigrant visa interview based on another ground of inadmissibility other than unlawful presence, USCIS will deny the request for the provisional unlawful presence waiver. USCIS's determination on the provisional unlawful presence waiver is not a *conclusive* finding of inadmissibility. It also is not an assessment of whether a particular crime or pattern of conduct would ultimately bar an individual from obtaining a legal status under the immigration laws.[1]

a. Please describe the process USCIS will undertake in reviewing a provisional waiver application filed by an applicant who is potentially subject to a ground of inadmissibility other than unlawful presence.

Response: Once USCIS receives a provisional unlawful presence waiver application, the application will be forwarded to the National Benefits Center (NBC) for adjudication. The applicant will be scheduled for a biometrics appointment. The results of the biometric checks will be forwarded to the adjudicator for review. The adjudicator then reviews the entire application, supporting evidence, and the results of the background checks conducted by USCIS. If the results of the background checks give USCIS reason

[1] 78 Fed. Reg. 536, 547 (Jan. 3, 2013).

to believe that a Department of State consular officer would find that the individual is inadmissible on grounds other than unlawful presence, USCIS will deny the application.

b. Where a background check reveals a criminal issue, will USCIS automatically deny the provisional waiver application or will it analyze and consider evidence submitted by the applicant that the crime does not render the person inadmissible?

Response: Since the Department of State consular officer will ultimately determine whether an individual is admissible to the United States, USCIS will not review analyze or consider evidence to determine if another ground of inadmissibility exists. USCIS will only find a "reason to believe" that a DOS consular officer may find the individual inadmissible based on his or her criminal history.

c. Where a provisional waiver application reveals a potential misrepresentation issue, will USCIS automatically deny the application or will it analyze and consider evidence submitted by the applicant that the misrepresentation was not willful or did not involve a material fact?

Response: If the individual indicates on the provisional unlawful presence waiver application that he or she has ever knowingly or willfully given false or misleading information to a U.S. Government official while applying for an immigration benefit or to gain entry or admission into the United States, USCIS will generally find a "reason to believe" a DOS consular officer may find that the individual is inadmissible to the United States.

d. If USCIS approves the waiver, does the approval signify that USCIS has made a finding that the applicant is not inadmissible for reasons other than unlawful presence?

Response: An approved provisional unlawful presence waiver only covers the unlawful presence grounds of inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act. If USCIS has "reason to believe" a DOS consular officer might find the applicant inadmissible on grounds other than unlawful presence, the applicant will not be eligible for a provisional unlawful presence waiver.

e. If the consular officer determines that the applicant is subject to additional grounds of inadmissibility, notwithstanding the approval of the I-601A by USCIS, does the finding of extreme hardship attached to the I-601A approval carry any weight in the adjudication of a subsequently filed I-601 waiver?

Response: No. Every extreme hardship and discretionary determination is based on a careful consideration of the evidence of record at the time of decision. If the DOS consular officer determines that a new ground of inadmissibility applies in the applicant's case, the applicant will need to file a Form I-601, Application for Waiver of Grounds of Inadmissibility with USCIS (if a waiver is available). USCIS will consider the DOS

consular officer's findings when reviewing the Form I-601 and assessing whether the applicant warrants a favorable exercise of discretion.

Question 2: Though a respondent who has accepted voluntary departure can apply for a provisional waiver, the application must be filed and biometrics must be taken while the person is in the United States.[2] Ideally, the provisional waiver application will be approved before voluntary departure expires, but if it is not, the respondent would need to depart the U.S., which would largely defeat the purpose of the provisional waiver program.

Response: An individual in removal proceedings is only eligible for a provisional unlawful presence waiver if, at the time of filing the waiver, the individual's removal proceedings were administratively closed and have not been re-calendared by the Executive Officer for Immigration Review. 8 CFR 212.7(e)(4)(v). There is no requirement that an individual's removal proceedings continue to be administratively closed during the adjudication of the provisional unlawful presence waiver. However, if the individual's removal proceedings were not administratively closed at the time of filing of the I-601A, USCIS will deny the provisional unlawful presence waiver regardless of any relief granted by an immigration judge.

If an individual is in removal proceedings, and has an approved I-601A application, the applicant or his or her legal representative should contact the Office of the Principal Legal Advisor at U.S. Immigration and Customs Enforcement (ICE) to make arrangements to have those proceedings terminated. For contact information, please see www.uscis.gov/provisionalwaiver.

a. Does USCIS anticipate that provisional waiver applications will be adjudicated well within the maximum statutory 120-day voluntary departure period?

   Response: Aliens who have been granted voluntary departure are not eligible for the provisional unlawful presence waiver because they are still in removal proceedings. See also the response in the introductory text above. USCIS also cannot estimate how long it will take to adjudicate a provisional unlawful presence waiver. USCIS is coordinating with DOS to ensure that the provisional unlawful presence wavier process streamlines the immigrant visa process and reduces the time that an individual is separate from his or her U.S. Citizen relative.

b. How can the applicant alert USCIS about an impending voluntary departure date and request expedited processing?

   Response: Please see response to question 2.b. above.

c. If the provisional waiver is not adjudicated prior to the end of the voluntary departure period and the applicant departs the U.S., can the provisional waiver still be approved or will the applicant need to proceed under the normal I-601 process?

[2] 8 CFR §212.7(e)(3)(i).

Response: If the applicant meets all of the requirements outlined in 8 CFR 212.7(e), the individual's provisional unlawful presence waiver will be approved even though an applicant may no longer be present in the United States at the time of the approval.

Adam Walsh Act

Question 3: AILA has received reports that USCIS is denying I-130 cases subject to the Adam Walsh Act (AWA) where the psychotherapist evaluation provided did not rely on the STATIC-99 test. The STATIC-99 is intended to predict the likelihood of recidivism, based on an individual score of 0 to 10. A score of 0 carries at least a 1.4% chance of recidivism. However, INA §204(a)(1)(A)(viii)(I) requires an I-130 petitioner to demonstrate that there is "no risk" to the beneficiary. There is no outcome on the STATIC-99 test that would support a finding of "no risk."

Is it USCIS policy to require that psychotherapist evaluations include the STATIC-99 test for purposes of AWA determinations? If so, please describe the guidance and instructions provided to the field to analyze AWA psychotherapist evaluations. Please also explain USCIS's rationale and the basis for requiring this particular test. If this is not USCIS policy, we respectfully ask USCIS to instruct the field that psychotherapist evaluations should be adjudicated on their merits and that the STATIC-99 test is not the only test available to provide indicia of "no risk."

Response: USCIS does not require an evaluation to include the STATIC-99 test for purposes of AWA determinations. If you have specific examples where a case was denied because of a lack of a STATIC-99 test, please bring it to our attention.

Deferred Action for Childhood Arrivals (DACA)

According to the latest information published through February 14, 2013 by the Office of Performance and Quality (OPQ), USCIS has approved 199,460 DACA cases of the 423,624 cases accepted since the program's inception in August 2012. That leaves approximately, 224,174 cases under review by USCIS. We would appreciate the following additional detail on these DACA statistics:

Question 4: What percentage of approved cases were filed by applicants in removal proceedings?

Response: We understand your interest in receiving data specific to applicants requestors in removal proceedings. However, at this time, only the data published at www.uscis.gov/data is available for release. The data was updated as of March 15, 2013 and will be updated again in the near future. Your interest in the data is noted and we will provide updates on any additional data sets via the website.

Question 5: What percentage of cases under review were filed by applicants in removal proceedings?

Response: As noted above, only the data published at www.uscis.gov/data is available for release and any further information will be provided via the website.

Question 6: Members report that DACA applications filed by applicants in removal proceedings have not received RFEs, yet remain pending longer than those filed by applicants who are not in removal proceedings. Are DACA applications filed by applicants in removal proceedings handled differently than non-removal cases?

Response: USCIS is receiving a significant number of questions on a wide variety of issues relating to deferred action for childhood arrivals. To ensure that potential requestors and stakeholders receive access to all USCIS updates and information, we will provide updates for deferred action for childhood arrivals via our website. Regrettably, we are unable to provide an individual response to this question. Please check http://www.uscis.gov/childhoodarrvials for updates and information. To receive email notices when web updates are made click the "Get Updates for This Page" link on the lower right side page.

Question 7: Applicants in proceedings must inform the court of the status of their DACA applications in order to obtain continuances for court dates. How can members follow up with USCIS on long-pending DACA applications, particularly those filed by applicants in removal proceedings?

Response: USCIS has published processing times on www.uscis.gov for both the Form I-821D and the Form I-765, Application for Employment Authorization, when concurrently filed with Form I-821D. Individuals or their representatives may follow up on the status of their request, if outside the posted normal processing times, by calling the National Customer Service Center. Members can also inquire about the status of a request using the e-Request tool available on uscis.gov.

USCIS Policy Manual

AILA applauds the January 13, 2013, announcement that USCIS is moving to a centralized USCIS Online Policy Manual. In the past, USCIS policy in various areas was not available to or easily accessible by the public. We anticipate that this manual will do much to improve transparency in the policy dissemination process.

Question 8: Please provide your best estimates and goals as to when each chapter of the Online Policy Manual will be made available to the public.

Response: USCIS is working to finalize additional Policy Manual sections during the remainder of the year. These sections include travel, employment, and identity documents; customer service; Temporary Protected Status (TPS); and adjustment of status.

Question 9: Please provide guidance as to how the agency will solicit public comment and input into the policy making process. Will stakeholders be given the opportunity to comment on proposed policy changes before they are implemented and incorporated into the Online Policy Manual?

Response: USCIS proactively solicits external feedback during the policy development process. Sections of the USCIS Policy Manual that contain new or revised policy guidance will be posted on the Feedback Opportunities page of uscis.gov with instructions on how to submit comments.

USCIS will not post sections containing information that is law enforcement sensitive, confidential or otherwise protected from disclosure under the Freedom of Information Act.

The agency will notify stakeholders via GovDelivery on the day that new or revised policy guidance is posted to encourage the stakeholder community to submit feedback. Stakeholders are instructed to submit comments by sending an email to the Public Engagement Feedback mailbox: opefeedback@uscis.dhs.gov, indicating the relevant policy document for comment in the subject line. USCIS will consider the feedback received and will make revisions to the guidance as appropriate.

Updates on the status of policy guidance are shared with stakeholders on the "Feedback Updates" page of the website.

Question 10: USCIS has stated that the guidance contained in Volume 12 of the Policy Manual (Citizenship and Naturalization) replaces guidance contained in Chapters 71, 72, 73, 74, 75, and 76 of the Adjudicator's Field Manual, the AFM's related appendices, and policy memoranda.[3] Please provide a list of citizenship and naturalization policy memoranda that are superseded in part or in whole with the release of Volume 12 of the Online Policy Manual. We also ask that USCIS provide a list of superseded memoranda with the release of each future volume, part, and/or chapter.

Response: Please note that the guidance contained in Volume 12 of the Policy Manual (Citizenship and Naturalization) supersedes any and all guidance contained in any previously issued USCIS policy memoranda. USCIS has added a prominent stamp on all pertinent and superseded policy memoranda published in the USCIS web site indicating the following: "IMPORTANT: This policy memo has been partially or fully superseded by the USCIS Policy Manual. Please visit www.uscis.gov/policymanual for current policy."[4] USCIS has moved all such policy memoranda previously published in the USCIS web site policy memoranda page[5] to the web site's archive page.[6] In addition, USCIS has added similar statements to clarify that the guidance contained in Volume 12 supersedes all previously issued (related) guidance to the pertinent USCIS web site and AFM pages.[7] Although Volume 12 of the Policy Manual currently

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[3] USCIS Policy Alert, "Comprehensive Citizenship and Naturalization Policy Guidance," (Jan. 7, 2013), available at http://www.uscis.gov/policymanual/Updates/20130107-Comprehensive%20Citizenship%20and%20Naturalization%20Policy%20Guidance.pdf. and *published on* AILA InfoNet at Doc. No. 13010746 (*posted* 1/7/13).

[4] See, for example, the following "stamped" memoranda: http://www.uscis.gov/USCIS/Laws/Memoranda/2011/April/national-guard-naturalize-sect-329.pdf

[5] USCIS web site's current policy memoranda page: http://www.uscis.gov/memoranda.

[6] See, for example, USCIS web site's policy memoranda archive page: http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=0c69663cce44b210VgnVCM100000082ca60aRCRD&vgnextchannel=0c69663cce44b210VgnVCM100000082ca60aRCRD.

[7] See, for example, USCIS web site's current policy memoranda page: http://www.uscis.gov/memoranda. See, for example, USCIS web site's policy memoranda archive page: http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=0c69663cce44b210VgnVCM100000082ca60aRCRD&vgnextchannel=0c69663cce44b210VgnVCM100000082ca60aRCRD. See,

cites to sections of the AFM that have not been superseded by the Policy Manual, USCIS will update these citations as more Policy Manual chapters are finalized.

Question 11: In past meetings with AILA, USCIS has stated that it was reviewing its policy surrounding issues raised in a variety of subject areas. For example, at the October 9, 2012, meeting, USCIS stated that it was reviewing the issues raised in AILA's April 4, 2012 memorandum[8] relating to the interpretation of "specialty occupation" in response to a question relating to recent denials of H-1B petitions. USCIS also stated at the October 9, 2012 meeting that it was considering AILA's January 24, 2012, memorandum on the interpretation of "specialized knowledge"[9] in the course of its review of L-1B policy and was also considering providing further guidance on the treatment of physical therapist Immigrant Petitions under the EB-2 classification where the first professional degree has been evaluated as a Master's degree. Will USCIS be releasing guidance on H-1B "specialty occupation," L-1B "specialized knowledge," and the EB-2 classification for physical therapists before the release of the complete Volume 2 (Nonimmigrants) or Volume 6 (Immigrants) of the Online Policy Manual or will guidance in these areas be withheld until it can be included in the Online Policy Manual?

Response: Individual policy memoranda will continue to be issued in subject areas where a comprehensive Policy Manual section has not yet been published. Upon publication of a Policy Manual section, any policy memoranda that are still in effect will be folded into the Manual.

"Good and Sufficient" Cause for Revocation of Approved Petitions

Question 12: Under INA §205, DHS may, at any time, revoke the approval of any immigrant petition for "good and sufficient cause." However, neither the statute nor the regulations define "good and sufficient cause." Members have recently reported cases in which long-approved I-140 petitions are being reopened, readjudicated, and denied based on USCIS's reinterpreting factual and legal issues on which there appears to be no clear policy, such as the definition of a "related field of study." These cases have been reopened in some instances years after the original approval, long after the beneficiaries have established lives, careers, and families in the United States while waiting patiently to work through the immigrant visa backlogs. Many have availed themselves of AC21 portability with the sole basis of their status being a pending I-485 based on USCIS's approval of the I-140 petition years ago.

In the context of nonimmigrant petition extensions, USCIS has long held to the principle that a prior approved petition shall be given deference barring (1) material error; (2) change in

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for example, AFM introductory (landing) page: http://www.uscis.gov/portal/site/uscis/menuitem.f6da51a2342135be7e9d7a10e0dc91a0/?vgnextoid=fa7e539dc4bed010VgnVCM1000000ecd190aRCRD&vgnextchannel=fa7e539dc4bed010VgnVCM1000000ecd190aRCRD&CH=afm. See, for example, AFM Chapter 73 (Naturalization Eligibility Requirements): http://www.uscis.gov/portal/site/uscis/menuitem.f6da51a2342135be7e9d7a10e0dc91a0/?vgnextoid=fa7e539dc4bed010VgnVCM1000000ecd190aRCRD&vgnextchannel=fa7e539dc4bed010VgnVCM1000000ecd190aRCRD&CH=afm

[8] *Published on* AILA InfoNet at Doc. No. 12040451 (*posted* 4/4/12).

[9] *Published on* AILA InfoNet at Doc. No. 12012560 (*posted* 1/25/12).

circumstances; or (3) new adverse evidence.[10] In practice, a high standard for readjudication, similar to that accorded to nonimmigrant petition extensions, provides a high level of reliability, dependability, and finality to agency decisions. This is particularly important in the family-based and employment-based immigrant petition scenarios given the severe multi-year backlogs.

For these reasons, the reopening and readjudication of immigrant petitions should only occur in rare circumstances exhibiting "good and sufficient cause" such as (1) material error; (2) change in circumstances; or (3) new adverse evidence, as described above. Please describe USCIS's policy on petition revocations, including the review process for identifying and readjudicating immigrant petitions that have long been approved.

Response: USCIS is guided by BIA precedent decisions in determining when revocation of a petition may be warranted, including Matter of Ho, 19 I&N Dec. 582 (BIA 1988), Matter of Estime 19 I&N Dec. 450 (BIA 1987) and Matter of Arias, 19 I&N Dec. 568 (BIA 1988). USCIS is not aware of a recent increase in the occurrence of I-140 revocations. If you are aware of such a trend, please bring these cases to our attention.

Matter of Arrabally and Yerrabelly

Question 13: Has guidance from USCIS HQ gone out to the field offices relating to the application of *Matter of Arrabally and Yerrabelly*, (25 I&N Dec 771 (BIA 2011) including in the context of an application for adjustment of status filed by an individual with an approved immediate relative petition, who previous departed and reentered on advance parole in order to resume Temporary Protected Status? Can you communicate the nature of this guidance to AILA?

Response: Guidance will be forthcoming.

K-3 Petitions

Question 14: With the passage of the LIFE Act in December 2000 and the promulgation of implementing regulations in April 2001, both Congress and Legacy INS announced a policy that would, in theory, allow foreign spouses to join their U.S. citizen spouses in the United States quickly and avoid the long separation associated with increased I-130 processing times. USCIS has adopted a policy to adjudicate the K-3 petition (Form I-129F) and petition for alien relative (Form I-130) simultaneously. This practice effectively eliminates the benefits of the K-3 petition and frustrates the intent of the LIFE Act together. DOS takes the position that when the I-129F and the I-130 are approved together, the beneficiary becomes ineligible for a K-3 visa and therefore, proceeds with processing the immigrant visa application. Will USCIS reconsider its policy to adjudicate both petitions together and implement a policy to adjudicate K-3 petitions within 30 days in order to achieve the clear policy imperative announced by Congress with the creation of the K-3 visa?

Response: The K-3 visa was intended to reunite families separated due to a backlog in I-130 adjudications. However, I-130s are no longer backlogged and are currently being processed in under 6

[10] "This Significance of a Prior CIS Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity," (Apr. 23, 2004) (HQOPRD 72/11.3), *published on* AILA InfoNet at Doc. No. 04050510 (*posted* 5/5/04).

months. Therefore, USCIS does not, at this time plan to implement a new policy on the K-3 visa petition process.

Change of Status for J-2 Non-Immigrant Derivatives

Question 15: AILA renews its objection to a change in USCIS policy with respect to the legal effect and scope of an INA §212(e) waiver for certain J-2 dependents of J-1 physicians who have been granted "Conrad" INA §214(l) waivers. In a break with prior practice, USCIS is interpreting INA §214(l) as limiting to H-4 status the J-2 dependents of former J-1 physicians who have been granted waivers of the INA §212(e) foreign residence requirement, until after the physician has completed the full three-year J-1 waiver commitment in H-1B status. This new interpretation was conveyed to AILA in a telephonic meeting with SCOPS on February 29, 2012, where SCOPS stated that a J-2 is ineligible for a change of status to a visa classification other than H-4, until the J-1 waiver recipient completes the full three year medical service requirement.[11] We believe that this interpretation (1) has no basis in the statute or regulation; (2) is contrary to Congressional intent; and (3) does a disservice to the public policy goals of the physician J-1 waiver program.

Subsequent to the meeting with SCOPS, AILA was provided a copy of a letter from Senator Kent Conrad, author of the J-1 waiver provision, to Director Mayorkas, expressing objection to the new USCIS interpretation.[12] With respect to the legal effect and scope of the waiver, Senator Conrad states: "The waiver is revocable if the physician fails to complete [the three-year] commitment, but is considered granted at the time the physician commences the three-year commitment." Senator Conrad says that "…the J-2 spouse should likewise be eligible for a change of status to a work-authorized visa classification." Additionally, Senator Conrad confirms: "…Congress did not intend to impede the ability of J-2 spouses to work in H-1B status during the three year J-1 waiver commitment term of their spouses." In his conclusion, Senator Conrad urges USCIS to return to its prior policy that "… [a J-2] spouse is not precluded from changing status to another visa classification."

Please inform us of the steps that USCIS has taken to return to the *status quo ante* on this issue, which was to permit a J-2 dependent of a J-1 waiver physician to change status to any visa classification for which he or she was otherwise eligible once the J-1 waiver is granted to the J-1 principal.

Response: USCIS has not changed its policy pertaining to such cases. By statute and regulation, J-2 spouses of Conrad 30 waiver recipients are only eligible to change to H-4 status while the Conrad 30 waiver recipients are working towards fulfilling the terms and conditions of their Conrad 30 waivers. See INA § 214(l)(3); 8 CFR § 212.7(c)(4), (c)(9)(iv) and (vi)(D); 8

[11] *Published on* AILA InfoNet at Doc. No. 12090540 (*posted* 9/5/12); *see also*, "Questions and Answers: USCIS Service Center Operations Directorate (SCOPS) and American Immigration Lawyers Association (AILA) Meeting, February 29, 2012,"
http://www.uscis.gov/USCIS/Outreach/Notes%20from%20Previous%20Engagements/2012/February%202012/SCOPS_AILA_meetingQA_22912.pdf.

[12] Attached, and *published on* AILA InfoNet at Doc. No. 13030852 (*posted* 3/08/13).

CFR § 248.2(a)(3); and 8 CFR § 245.1(c)(2). Please also see the Conrad 30 webpage at www.uscis.gov.

EB-5 Unit Relocation

In July last year, USCIS announced its intention to create a new EB-5 Program Office to be led by a Chief of Immigrant Investor Programs.[13] We applaud USCIS for creating this Program Office in recognition of the importance and growth of the EB-5 program and the need for oversight and efficient administration.

Question 16: What is the current status of the creation of the new Program Office? What has already happened and what remains to be done?

Question 17: When does USCIS expect the transition from the CSC to the Program Office to be complete?

Question 18: Where will the EB-5 Program Office be located within the overall USCIS structure?

Question 19: What is the current status of cases pending at the CSC? Are CSC cases on hold at this time or are there any plans to place them on hold?

Question 20: Will EB-5 examiners and staff (economists, business analysts, lawyers, etc.) all be housed under the new EB-5 Program Office or will they be drawn from other program offices or directorates? Will any CSC staff move to the new EB-5 office in DC?

Response: This summer, USCIS will stand up the new Immigrant Investor Program Office, initially under the Service Center Operation Directorate, led by an SES-level manager. Daniel Renaud, Director of the Vermont Service Center, is currently serving as Acting Chief of the Immigrant Investor Program Office. EB5 resources in California have been realigned under the Acting Chief and will continue to process EB-5 cases until all work is transitioned to the new Program Office in Headquarters. Transition will be complete once the HQ IPO is fully staffed and trained and the workload has completely migrated from California. USCIS anticipates that the program will begin transitioning in May 2013 and the transition period will last through the end of the calendar year. The first EB-5 form type to be transitioned to the new Program Office will be Form I-924. USCIS is currently recruiting for a number of positions in the new Program Office, including staff with economic and legal expertise and until hiring is complete, operations will be supported as appropriate by staff detailed from other components of USCIS.

Evidence of Lawful Admission when Border Crossing Cards (BCC) Are Used or the Non-Citizen was "Waved-In"

Question 21: It is not uncommon for an applicant for adjustment of status to claim that he or she was in a car that was waved through the checkpoint by the CBP officer or to claim that only the driver of the car was asked questions regarding admissibility. Matter of Areguillen holds that noncitizens who present themselves for questioning and make no knowing false claim to

[13] "Message from the Director: New EB-5 Program Office," *published on* AILA InfoNet at Doc. No. 12071846 (*posted* 7/18/12).

citizenship are "inspected," even if they volunteer no information.[1] Additionally, an "admission" occurs when the agent allows the noncitizen to pass into the United States. Matter of Quintalan holds that the noncitizen must only show "procedural regularity" as opposed to "compliance with substantive legal requirements" to show an admission.[2] In other words, the noncitizen does not have to demonstrate actual admissibility, but instead only needs to demonstrate that the conduct of the agent at the port of entry was procedurally regular.

Response: In Matter of Quilantan, DHS did not contest the claim that she had presented herself for inspection but was "waved in." 25 I&N Dec. at 286. This factor may not be present in all cases. Where the issue is contested, the applicant bears the burden of proof. Matter of Areguillin, 17 I&N Dec. at 310-11and the Board remanded Areguillin, in part, to give the respondent a chance to present corroborating evidence. As with any other factual claim, the applicant must present evidence sufficient to permit a reasonable adjudicator to conclude that a factual claim is true. INS v. Elias-Zacarias, 502 U.S. 478 (1992).

Question 22: Please describe the guidance and/or training that USCIS Field Operations has provided to local offices regarding the type of evidence that would be sufficient to meet the applicant's burden of proof (preponderance of the evidence) in these cases?

Response: USCIS has not provided training regarding the specific cases cited above; however, officers have received training on appropriate standards of proof.

Question 23: What is USCIS Field Operations doing to ensure consistency among USCIS field offices in evaluating Matter of Areguillen/Quintalan adjustment cases?

Response: The burden of proof remains on the applicant to establish that he/she physically presented himself/herself for questioning and made no knowing false claim of citizenship to satisfy the "inspected and admitted" requirement of section 245(a) of the Act. Individual applications are evaluated on a case-by-case basis.

Question 24: Is the presentation of a Border Crossing Card (BCC), by itself, sufficient proof of lawful admission?

Response: No. If the applicant establishes that he or she presented himself or herself at a port-of-entry for inspection, with a border crossing card, and was permitted to enter the United States, the applicant will have established that he or she was "admitted" for purposes of adjustment eligibility.

[1] *Matter of Areguillen*, 17 I&N Dec. 308 (BIA 1980).

[2] *Matter of Quintalan*, 25 I&N Dec. 285 (BIA 2010).