



U.S. Citizenship
and Immigration
Services

January 5, 2005

Interoffice Memorandum

To: Regional Directors
District Directors
Service Center Directors

From: William Yates /S/ by Janis Sposato
Associate Director of Operations
United States Citizenship and Immigration Services

Re: Revised Interview Waiver Criteria for Form I-485 Application to Register
Permanent Residence or Adjust Status

Purpose.

This memorandum provides revised guidance to the field on how to determine under what criteria Form I-485 (Application to Register Permanent Residence or Adjust Status) should be transferred to a District Office for interview. This guidance is necessary due to the significant increase in the number of cases transferred recently from the Service Centers to District Offices as a result of the increased production levels we have seen with our backlog elimination efforts. Upon review of some of the cases transferred, USCIS felt that the criteria for waiving interviews should be revised to reflect current operational priorities in support of backlog elimination. Generally, interviews should be viewed as necessary when the decision to grant or deny the benefits would benefit from the back and forth questioning of an interview or an assessment of credibility. Interviews should not be used to obtain information that can be readily requested and provided in response to an RFE.

Legal.

Form I-485: Pursuant to 8 CFR 245.6 each applicant for adjustment of status shall be interviewed by an immigration officer. This interview may be waived if the Service determines that an interview is unnecessary. The interview waiver criteria are standards set at the national level.

Current I-485 Employment Based Interview Waiver Criteria

Generally, employment-based cases meeting the following criteria are waived interview:

- The principal applicant is employed by the same petitioner who submitted the approved underlying employment-based visa petition.
- The principal applicant has been approved as an alien of extraordinary ability or alien of exceptional ability and is otherwise eligible for adjustment of status.
- The principal applicant has been approved as an outstanding professor or researcher, or a multinational executive/manager and has a continuing offer of employment from the same petitioner who submitted the underlying approved petition.
- Adjustment applicants who received national interest waivers based on performing primary medical care to a medically under-served area who demonstrate that they intend to continue according to the terms and conditions of the underlying petition.

Previously Employed transfer criteria for Form I-485.

Prior to the revisions outlined in this Memorandum, Service Centers automatically transferred cases to District Offices for interview for the following reasons:

- A need for validation of identity;
- A need for validation of legal status;
- Questionable admissibility and/or qualifications;
- Apparent fraud;
- A second filing;
- An applicant with fingerprint rejected twice;
- An applicant with medical condition class A or B;
- The A-file cannot be located at the time of adjudication.

Revised guidance related to Form I-485 transfer criteria

- **Entry Without Inspection/ Validation of Identity.** USCIS is currently reviewing this requirement. In the interim, if there is no evidence that the alien was inspected, paroled or interviewed by an Immigration officer, the centers will continue to transfer these cases to the district offices for interview.
- **Validation of legal status.** For cases where there is a need to validate legal status, other than lack of evidence of inspection, admission and/or parole, Service Centers will authorize district transfer only where a determination of legal status cannot be obtained through file review and/or by requesting additional evidence from the applicant.

- **Questionable admissibility and/or qualifications.** Service Center Directors will no longer send **all IDENTS** to District Offices for interview. A significant percentage of IDENTS exist only because of immigration violations that have already been resolved or could be resolved with the submission of a waiver application. Service Centers
- will now retain those IDENTS that are purely immigration violations and hold for officer review at the time of adjudication. All other IDENTS will continue to be sent to district offices for interview. For cases where **qualifications** are questionable, adjudicators should obtain clarifying information whenever possible through an RFE and adjudicate the case on its merits.
- **Apparent fraud.** Where **fraud** is suspected Service Centers must first go through established liaison and referral procedures with local Fraud Detection Units before transferring cases to the District Office. Cases that are then transferred for fraud should have a memo to file articulating the fraud concerns, delineating any identified evidence, noting the source and extent of that evidence, and identifying all other A-numbers on related cases.
- **Second filing.** For cases where there is evidence that the applicant **applied twice**, all relevant and related files must be obtained, and any questionable issue clarified through an RFE.
- **Fingerprints twice rejected.** Where an applicant's **fingerprints** were **rejected twice by the FBI for illegibility**, Service Centers should have the applicant submit a five year certification of good conduct from local law enforcement.
- **Class A or B medical conditions.** Cases involving **medical** conditions for which a **waiver** can be obtained should be adjudicated without recourse to an interview.
- **A file not located at time of adjudication.** Service Centers must exercise due diligence to ensure that A-files and all other related files are located prior to adjudication. If the A-file is lost, Service Centers must follow existing procedures for creation of temporary files and for adjudication on a temporary file.

While the purpose of this memorandum is to ensure that cases in the waiver categories are only transferred for interview when they will actually benefit from the special attention of an interview, we expect adjudicators to use their judgment about transferring cases for interview whether or not the case falls within the transfer criteria described above. Any case transferred for reasons other than entrance without inspection or non-immigration related IDENTS must first receive supervisory approval of the transfer. Questions related to the above guidance can be directed to Robert Genesoni, at (202) 272-1529, through established communication channels.