



# Questions and Answers

## **USCIS National Benefits Center (NBC) and American Immigration Lawyers Association (AILA) Meeting November 3, 2015**

### **Overview**

On November 3, 2015, the American Immigration Lawyers Association (AILA) met with USCIS's National Benefits Center (NBC) to discuss new NBC initiatives, staffing updates and follow up items. The questions and answers are provided below for the benefits of interested stakeholders.

### **Questions and Answers**

#### **New NBC Initiatives, Staffing Updates and Follow-up Items**

##### **1. Question**

Please provide updates on new NBC initiatives, including any new standard operating procedures that are currently in process or are scheduled.

**Response:** We will give you a combined answer for this question and Question #3 where you ask about challenges and plans for the upcoming year.

- NBC is working toward a paperless environment for I-90 applications. New I-90 applications are either filed directly into USCIS ELIS or submitted by paper to the Lockbox. All paper applications filed at the Lockbox are entered into the USCIS ELIS platform. After entry into USCIS ELIS, applicants are provided the opportunity to establish an on line account. At this time, USCIS ELIS cases are being adjudicated jointly by the NBC and the Potomac Service Center. Future plans are for all I-90 filings to gradually transition to the Potomac location.
- You asked about expansion of qualifying relatives and extreme hardship for I-601A applications in another question so we will go over this later.
- The NBC continues the shipments of I-485 Interview Waiver cases to Field Offices. Field Office Directorate has a goal of parity with interview cases by the second quarter of the calendar year.
- We have established a working group with HQ Field Operations in order to work out the details for accepting the Special Immigrant Juvenile case load. We hope to begin training in January 2016 and take on the SIJ cases in February.
- The NBC anticipates an expansion of the I-601A process which we will discuss in more detail in Question 6. There will be a need to train officers after the expected final policy

and rule making or regulation change. We anticipate a higher volume of applications based on the new guidance.

## **2. Question**

Please provide an update on the staffing levels at the NBC, including the number of federal employees and contractors. Please indicate whether there have been any key staffing changes that have taken place since our last engagement on May 15, 2015.<sup>1</sup>

**Response:** Since May 15, 2015, the NBC has made the following changes affecting division leadership:

- John Rogers, Assistant Center Director for the Records Division

NBC currently has nearly 900 federal employees on site plus about 1050 contract employees

## **3. Question**

We greatly appreciate the progress the NBC has made to reduce processing times and undertake adjudications in new product lines. What challenges does the NBC anticipate for the coming fiscal year? Is the NBC focusing resources on particular areas/product lines?

**Response:** This response is combined with the response for Question 1.

## **4. Question**

Please comment on any changes in lockbox/intake procedures and filing volume for family-based adjustment of status applications in light of the changes in the timing for filing of adjustment of status applications announced by USCIS and the Department of State with the release of the October Visa Bulletin.

**Response:** We are monitoring and tracking these applications and making them available to field offices as they become ready for adjudication.

## **Processing Times**

### **5. Question**

Please provide current processing times for the following:

- a) N-400, Application for Naturalization.

**Response:** We would ask you to go to uscis.gov and look up the processing time by Field Office, as processing times for N400, including NBC's portion, are rolled up into each Field Offices listed time. There are no separate processing times for NBC.

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<sup>1</sup> AILA NBC Liaison Committee Meeting Minutes (5/15/15), AILA Doc. No. 15090809, Question 2, available at <http://www.aila.org/infonet/nbc-liaison-committee-meeting-minutes-05-15-15>.

- b) Interview-waiver I-485, Application to Register Permanent Residence or Adjust Status.

**Response:** The processing times for these are consolidated with I-485 Interview cases and can be found on each Field Office's section on the uscis.gov web page. There are no separate processing times for NBC.

- c) I-601A, Application for Provisional Unlawful Presence Waiver.

**Response:** The cycle time reflected earlier on the uscis.gov website was incorrect. The current processing date for I-601A is 21 June 2015.

## Provisional Waivers (Form I-601A)

### *Expansion of Provisional Waiver Program*

#### **6. Question**

On November 20, 2014, DHS Secretary Johnson published a [memorandum](#) titled, “Expansion of the Provisional Waiver Program,” instructing United States Citizenship Immigration Services (USCIS) to amend its 2013 regulation to expand the Provisional Waiver program to all statutorily eligible applicants.<sup>2</sup> Please provide a current estimated time frame for when the expansion of the provisional waiver program will be operational.

**Response:** The proposed rule that would expand eligibility for Form I-601A provisional unlawful presence waivers was published in the Federal Register on 7/22/15 with a 60-day public comment period, which ended on 9/21/2015. USCIS is currently reviewing the public comments received and will announce and publish the Final Rule on a date yet to be determined.

#### **7. Question**

Does NBC intend to add extra staff to handle the additional applications that will result from the expansion of the I-601A waiver program?

**Response:** At this time, we are unable to determine the overall impact on resources of implementing the rule expanding eligibility for the provisional unlawful presence waiver.

#### **8. Question**

Does NBC anticipate that the processing times for I-601A waiver adjudications will remain within the same posted processing times that are [currently reported](#) (2-3 months)?<sup>3</sup>

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<sup>2</sup> Memorandum, DHS Secretary Jeh Johnson, “Expansion of the Provisional Waiver Program,” (Nov. 20, 2014), AILA Doc. No. 14112007, available at <http://www.aila.org/infonet/dhs-expansion-of-the-provisional-waiver-program>.

<sup>3</sup> National Benefits Center Processing Time Report (9/22/15), AILA Doc No. 15092307, available at <http://www.aila.org/infonet/processing-time-reports/nbc/2015/nbc-processing-time-report-09-22-15>.

**Response:** At this time, we cannot predict, with any accuracy, how implementing the rule expanding eligibility for the provisional unlawful presence waiver will impact processing times.

## *I-601A Adjudications*

### **9. Question**

A review of individual case reports received by AILA indicates that the NBC is inconsistently applying the “extreme hardship” standard in adjudicating provisional waivers. While we understand that the hardship determination is discretionary and that guidance on the definition of extreme hardship is forthcoming,<sup>4</sup> what procedures does the NBC have in place to ensure consistency in the I-601A adjudications process?

**Response:** Extreme hardship determinations are discretionary judgments based on the totality of the facts and circumstances present in an individual case. NBC works very hard to ensure that all officers receive consistent training on the common consequences of visa refusal as well as the factors that can, individually or in the aggregate, serve as the basis for finding extreme hardship. Supervisors also perform regular quality assurance reviews on their assigned officers’ cases, providing feedback and additional guidance when necessary. In addition, USCIS leadership discusses the application of extreme hardship standards on a regular basis and distributes information or changes in the application of these standards to the division, as they are clarified.

- a. What supervisory-level review is undertaken before the issuance of a denial?

**Response:** All new officers require 100% review of their decisions until such time as the officer has demonstrated an acceptable level of competence with the adjudication. Once the officer is no longer under 100% review, supervisors continue to review all derogatory decisions until the officer has demonstrated competence in the articulation of those decisions. Once an officer has met the standards above, denials based on extreme hardship and statutory issues, no longer require supervisory review before issuing the denial. However, for denials based on a reason to believe that an additional ground of inadmissibility might apply at the time of immigrant visa interview, require supervisory concurrence.

- b. Please provide an update on the timeframe for release of the guidance on the definition of “extreme hardship” as announced by DHS Secretary Johnson on November 20, 2014.

**Response:** USCIS published the Draft Policy Manual Guidance on Extreme Hardship on 10/07/15. The 45-day public comment period will run from 10/07/2015 through 11/23/2015. Implementation of the guidance will occur, following review of any public comments received, on a date TBD.

- c. Can NBC provide any filing tips for how an I-601A waiver package should be organized? What is the best way to separate or organize the many Exhibits and numerous pages (colored Exhibit pages, numbering of pages, Table of Contents, etc.)?

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<sup>4</sup> DHS Memo on Expansion of the Provisional Waiver Program.

**Response:** USCIS welcomes the categorization of like-evidence in order to facilitate effective I-601A processing, however we have no specific tips for the best way to organize the evidence.

#### *NBC and Department of State Coordination on I-601A Adjudications*

#### **10. Question**

In September 2015, AILA received several reports (see Appendix A) that NBC denied numerous Form I-601A provisional waiver applications on the basis that the National Visa Center (NVC) had rejected the fee payments. In each instance however, the NVC confirmed that the fees had in fact been paid. The NVC confirmed payment via the online [Immigrant Visa Invoice Payment Center](#),<sup>5</sup> cashed checks, and/or the NVC directly communicated to the applicant that the payment had been accepted.

- a. If the NBC is made aware that it denied an I-601A application in error under such circumstances, will it exercise its *sua sponte* authority to reopen the case?

**Response:** Cases where a fee issue has been identified will be thoroughly reviewed; any necessary and appropriate course of action will be taken based on the results of that review.

- b. In June 2015, DOS experienced technical difficulties with its website.<sup>6</sup> As a result of the DOS technical issues, has the NBC experienced any processing issues or technical glitches related to I-601A processing?

**Response:** Yes. Please see the response to the next question.

- c. What is the NBC's process for verifying the payment of visa fees for I-601A applicants?

**Response:** NBC was informed of issues with the integrity and consistency of the Immigrant Visa Status in databases. Therefore the NBC has updated its policy on reviewing the DOS Immigrant Visa Processing Fee. After consultation with the DOS, the NBC no longer denies I-601A cases where the applicant has provided a DOS Immigrant Visa fee receipt showing that the Immigrant Visa fee was paid. Cases received without evidence that the visa fee was paid, or receipts which only indicate that the fee is "In process," will continue to be denied.

#### **Adjustment of Status**

##### *Employment Authorization Cards (EAD)*

#### **11. Question**

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<sup>5</sup> <https://ceac.state.gov/CTRAC/Invoice/signon.aspx>

<sup>6</sup> *Assistance for Applicants Experiencing Technical Difficulties*, June 4, 2015, AILA Doc. No. 15060509, available at <http://www.aila.org/infonet/dos-instructions-experiencing-tech-difficulties>

The Department of Homeland Security Office of Inspector General (OIG) [report](#) entitled “USCIS’s Issuance of 3-year Employment Authorization Documents Following a Federal District Court Injunction,” was issued on August 11, 2015.<sup>7</sup> The report noted that USCIS opened a second card production facility in Lee’s Summit, Missouri in the past several months.<sup>8</sup>

- a. Is the Lee’s Summit facility intended to replace or supplement the existing Corbin, Kentucky facility?

**Response:** The Lee’s Summit Card Production Facility is not intended to replace the Corbin Card Production Facility but rather is supplementing their operations.

- b. Please provide AILA with a list of the documents that are produced at the facility in Corbin, Kentucky and at the facility in Lee’s Summit, Missouri.

**Response:** Both facilities are capable of producing the documents of the other.

- c. During the [August 13, 2015 Nebraska Service Center \(NSC\) stakeholder engagement](#), NSC stated that there has been a delay in production of all employment authorization documents (EADs) and Lawful Permanent Resident (LPR) cards.<sup>9</sup> Please provide an update on the production status of EAD and LPR cards.

**Response:** Normal production resumed in September. There is no backlog.

## Interview-Waiver I-485, Application to Register Permanent Residence or Adjust Status

### 12. Question

During the [May 15, 2015 liaison meeting](#), the NBC stated that the following I-485 categories are eligible for a waiver of the interview requirement: unmarried minor children and stepchildren of U.S. citizens, parents of U.S. citizens, natives/citizens of Cuba, and unmarried and under 14 year old child of a Lawful Permanent Resident.<sup>10</sup>

- a. Have there been any changes to the classifications of applicants who are eligible for an interview-waiver, including the addition of any new classifications of cases or the removal of any of the current case types to the list?

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<sup>7</sup> “USCIS’s Issuance of 3-year Employment Authorization Documents Following a Federal District Court Injunction,” AILA Doc. No. 15081367, available at <http://www.aila.org/infonet/oig-report-dhs-three-year-eads>.

<sup>8</sup> *Id.* at 4.

<sup>9</sup> NSC Liaison Q&As on Refugees and Asylum Issues (8/13/15), AILA Doc. No. 15071601, available at <http://www.aila.org/infonet/nsc-liaison-qas-on-refugees-asylum-issues-08-13-15>.

<sup>10</sup> AILA NBC Liaison Committee Meeting Minutes (5/15/15), Q1.

**Response:** No. The categories for consideration continue to be:

- Unmarried child of a U.S. citizen
- Parent of a U.S. citizen
- K-1 and K-2 visa holders (fiancee/child of fiancée)
- Unmarried and under age 14 child of Lawful Permanent Resident
- Natives/citizens of Cuba

- b. If it has been determined that the interview will be waived, would it be possible to post this information on the USCIS online case status or otherwise notify the applicant and/or the attorney of record?

**Response:** NBC provides interview waiver-eligible cases to field offices, but the field office determines if an interview will take place.

- c. **[Followup question]:** Why would a field office schedule Interview waiver cases for interview?

**Response:** USCIS Interoffice Memorandum titled “Revised Interview Waiver Criteria for Form I-485 Application to Register Permanent Residence or Adjust Status” dated January 5, 2005 outlines some reasons for an officer to refer an interview waiver I-485 for interview. USCIS retains the authority to require an interview for any particular application for adjustment of status under section 245 of Act even if the interview may be waived for that type of filing. Link to memo on uscis.gov:

[http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static\\_Files\\_Memoranda/Archives%201998-2008/2005/i485intwvr010505.pdf](http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/Archives%201998-2008/2005/i485intwvr010505.pdf)

## Affidavit of Support

### 13. Question

During the [May 15, 2015 liaison meeting](#), the NBC advised AILA that contractors are responsible for conducting initial case reviews of I-864s through use of an adjustment of status checklist.<sup>11</sup> For I-864s that are more complex, the NBC explained that an RFE may be triggered because the checklist questions are not able to cover every scenario.

- a. Would the NBC be willing to share a copy of the most recent I-864 checklist?

**Response:** The adjustment of status check list is a work processing tool for internal use only. It would not be appropriate to share copies of the checklist outside the NBC work environment.

- b. Where certain documents are not available at the time of filing, but will be available at the time of the interview, is a way to flag the case in order to avoid an RFE and allow the case to proceed for interview scheduling and transfer to the field office?

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<sup>11</sup> AILA NBC Liaison Committee Meeting Minutes (5/15/15), Q11.

**Response:** NBC sends Requests for Evidence based on the documents provided at the time of filing. Cases are adjudicated based on the evidence provided and sent to the field office if they are interview-ready. Based on AILA's suggestion, we changed the I-864 checklist so that if the income on tax return does not meet the poverty guideline for the household, we will further check if there is an evidence of current income submitted. If yes, an officer will review the sufficiency of current income before sending RFE for evidence of income/assets or qualified joint sponsor.

- c. Can the NBC provide any helpful tips for avoiding RFEs in connection with the I-864 Affidavit of Support?

**Response:** Since there are many possible filing scenarios, we would ask that you go to the USCIS website for filing tips located at <http://www.uscis.gov/forms-filing-tips>. In addition, HQ USCIS is planning an engagement on the I-864 in November and plans to cover the most common reasons for Requests for Evidence on the form.