Question & Answer

March 25, 2008
Revised April 3, 2008

USCIS NATIONAL STAKEHOLDER MEETING

Answers to National Stakeholder Questions

Note: The next stakeholder meeting will be held on April 29, 2008 at 2:00 pm

1. **Question:** We understand the change in policy for nunc pro tunc applications and they will no longer be facilitated by the Nebraska Service Center. We are concerned that unrepresented clients will apply for adjustment, not knowing that they are no longer eligible. We understand that Nebraska would adjudicate and deny the adjustment application, therefore the client forfeits the filing fee and will have to pay again once the nunc pro tunc is approved. Is USCIS considering or will it consider the following suggestions:

    a. Could USCIS add more specific information to the I-485 instructions that indicate in what cases a derivative asylee may have lost their status and how they should proceed with nunc pro tunc before filing an adjustment?

    Response: Changing a form is a labor-intensive, time-consuming process. This change may also be more confusing than helpful, since it applies to so few applicants. Still, the USCIS Service Center Operations (SCOPS) will take this under advisement.

    b. Could USCIS develop a "how to" section on the website for derivative asylees and the nunc pro tunc process?

    Response: SCOPS and the Asylum division will review the website information in light of this suggestion.

    c. Could USCIS provide information in asylum grant letters that addresses potential nunc pro tunc issues?

    Response: The Asylum division will take this issue under advisement.

    d. Could USCIS Service Centers develop policies that allow them to return adjustment applications without adjudication and taking the fee, for nunc pro tunc cases?

    Response: There is no way for USCIS to determine upon receipt of a file whether or not it falls within the group or category you indicate. As a result, the approach you suggest is not viable. We appreciate your comments, however.

2. **Question:** If an asylee derivative files an I-485 when the underlying relationship with the principal asylee is still in tact, but something happens after the I-485 is filed (for example, the principal asylee dies), is there any process for the derivative to inform NSC of this fact, and ask for them to put the case on hold until the nunc pro tunc is approved? Again we are concerned that the derivative could have their

I-485 denied because they lost their derivative status, and have to pay the filing fees again, through no fault of their own.

Response: If the case is pending, meaning a decision has not yet been rendered, the applicant can and should notify the USCIS Service Center via our customer service line and explain the change.

3. **Question:** Has USCIS stopped the practice of issuing denials of refugee/asylee adjustment of status cases where an individual is eligible for a "material support" waiver under the statute but where a waiver has not been considered in the case?

   Response: The Jonathan Scharfen memo of memorandum of March 26, 2008, *Withholding Adjudication and Review of Prior Denials of Certain Categories of Cases Involving Association with, or Provision of Material Support to, Certain Terrorist Organizations or Other Groups*, provides direct guidance on this issue and can be found on our website at:
   http://www.uscis.gov/files/nativedocuments/Withholding_26Mar08.pdf

   a. How does USCIS justify issuing these denials to refugees and asylees who have been living in the United States peacefully for years, and the determination for the group is based on a "Tier III" terrorist designation which the applicant is given no chance to challenge the "Tier III" determination.

      Response: Please see the response to Question 3, above.

   b. Can a reference to the availability of a waiver be made in the denial letter - the letter simply states that the refugee/asylee is a terrorist and therefore ineligible for adjustment.

      Response: USCIS will take this suggestion under advisement.

   c. What can be done in cases where adjustment has been denied and an individual believes he or she should have been considered for a waiver? Does USCIS intend to refer these cases for removal proceedings?

      Response: Please see the response to Question 3, above.

4. **Question:** What can be done to avoid repeated requests for fingerprints when it has already been established in connection with a previous application that the person's fingerprints are non-readable. Individuals who have physical conditions which make it difficult to obtain readable prints are continually sent back for fingerprints, which delays the final adjudication of the application. This is a hardship for individuals to repeatedly have to return for a procedure which has already been shown to be unobtainable. What is the procedure in a case like this?

   Response: USCIS policy establishes the validity period for one set of readable fingerprint results as 15 months.

   Where a set of fingerprints are readable, the fingerprint result remains on record with USCIS and may be used to satisfy the fingerprint requirement associated with each and every additional form submitted by, and processed for, the same applicant during the 15 month validity period.

Where an applicant submits a set of fingerprints that quality assurance review suggests is likely to be rejected by the FBI as unable to classify, standard practice in the field is to take a second set of fingerprints on a card using the manual ink method. This card is submitted if and when the first submission is returned as rejected thus alleviating the need for a return visit by the applicant.

If fingerprints are deemed unclassifiable by two sets of rejected prints, applicants shall not be rescheduled for additional fingerprints to be taken, provided either reject notice is less than 15 months old. In extreme cases, where a biometrics technician cannot capture any fingerprints due to a physical impairment, a fingerprint waiver may be issued at the discretion of the Application Support Center manager. In all cases, whether the two sets of fingerprints are rejected or the applicant has been granted a fingerprint waiver, the applicant must complete a Police Clearance Notice and return it to the Application Support Center where s/he originally had her/his appointment.

If you have confirmed cases of individuals with unclassifiable prints being repeatedly rescheduled for biometric collection in association with an application or petition for immigration benefits, please bring those cases to our attention.

5. **Question:** A person in removal proceedings before the Immigration Judge, pays the I-485 filing fee to the TSC (I-485 is based on a pending immediate relative I-130) but the immigration judge later closes the case without taking that paid-for I-485 as the person is granted some type of interim relief during the course of proceedings. After proceedings are closed, the applicant's I-130 is approved. The applicant wants to adjust status based upon the approved I-130 and has already paid the I-485 filing fee. Would USCIS-HQ create a policy/mechanism to permit someone who wishes to submit to USCIS an I-485 that was already paid for through the Texas Service Center at a time when it was initially thought the application would be heard in immigration court and decided by an immigration judge?

   Response: In the scenario above, it appears that the individual in question was under the jurisdiction of the Immigration Judge at the time he or she intended to request adjustment of status as relief from removal and submitted (not *filed*) his I-485 to the USCIS Texas Service Center solely for purposes of receiving a fee receipt and a biometrics scheduling notice pursuant to the "Pre Order Instructions" that the individual was provided in immigration court.

   The individual is then expected to *file* his I-485 with the immigration court. The Texas Service Center's role in this matter is limited to serving as the fee collection agent for the immigration court and does not control whether the individual actually completes the filing of the application with the court or the court accepts the application

   This was true even before April 2005 when the USCIS district offices previously accepted the fees for applications for relief that a person later took to the immigration court for filing. The only thing that has changed is that the Texas Service Center collects the fees instead of the local offices and the Service Center sends out receipt notices and biometric scheduling appointments.

   If the immigration judge granted some form of relief and closed the proceedings, then the I-485 filed with the immigration judge is also considered administratively closed regardless of whether or not the immigration judge formally acted on the I-485. Therefore, USCIS is not in a jurisdictional and

authoritative position to create a policy or mechanism that would treat such an I-485 as an active and pending application whereby USCIS would honor the fee paid after proceedings are closed.

If the judge has taken action on the case including the I-485, then the applicant needs to file a new application for adjustment of status in relation to the approved I-130 petition. Please note that the I-485 must be filed with the approved I-130 as the underlying petition.

6. **Question:** An unmarried child of a lawful permanent resident who is classified as a 2A beneficiary turns 21, but is still considered in the 2A category using his adjusted age under the Child Status Protection Act (CSPA). The petitioner naturalizes before the beneficiary's visa becomes current or before he adjusts status/immigrates. Could the beneficiary elect to stay in the 2A category, or does he automatically convert to 1st preference?

   Response: The Michael Aytes memorandum of June 14, 2006. *Clarification of Aging Out Provisions as They Affect Preference Relatives and Immediate Family Members Under The Child Status Protection Act Section 6 And Form I-539 Adjudications for V Status*, provides direct guidance on this issue and supersedes the Joseph Cuddihy memorandum of March 23, 2004 regarding Section 6.8 CFR 204.2(i) and controls the automatic conversion when the petitioner naturalizes. Under Section 6 of CSPA, the election to stay in the 2A category (opting out) must be affirmatively done by the beneficiary in a form of a written statement to USCIS. If the conversion has already occurred then the written statement should state that the conversion be revoked. The full responsibility of requesting the "opt out" is on the beneficiary and not USCIS.

   a. Would it make any difference if the beneficiary had already applied for adjustment of status using the adjusted age in the 2A category, but did not complete the adjustment before the petitioner naturalized?

      Response: As long as the beneficiary meets all of the necessary eligibility criteria under CSPA, it would not make any difference.

   b. Alternatively, would the beneficiary be considered an immediate relative because he was under 21 using his adjusted age at the time the petitioner naturalized?

      Response: The language of INA 201(f) [CSPA for Immediate Relatives], clearly indicates that the "actual age" of the beneficiary is "locked in" or "fixed" at the time of naturalization.

7. **Question:** It is our understanding that Adam Walsh I-130 cases are not being adjudicated because standard operating procedures for Adam Walsh cases have not yet been issued. What is the status of the Standard Operating Procedure (SOP)?

   Response: An SOP still in the review process. We do not have an anticipated time frame for implementation.

8. **Question:** The Vermont Service Center does not list case processing times for the form I-918. Can you please provide the average processing time for this form?

Response: The processing time for Form I-918 has averaged 6 months and the USCIS website is in the process of being updated to include this form type.

9. **Question:** The fee waiver report summary for the last two months (Dec. 2007 and Jan. 2008) states that N-400s made up 71% and 37% of fee waiver requests, respectively. Yet the overall fee waiver approval rate was 53% in Dec. and rose to 71% in January, as the number of N-400 fee waiver requests went down. This suggests a high denial rate for N-400 fee waivers. The report summary also states that "Service Centers receipted 100% of all N-400 fee waivers." Does "receipted" mean "approved?" If so, the report suggests a 100% approval rate for N-400 fee waivers.

   Response: No, "receipted" does not mean "approved." Rather, the term "receipted" simply indicates that an application/petition has been entered into the USCIS CLAIMS database – it does not imply anything regarding whether or not a fee payment was received related to the application.

   a. How does USCIS define an approval and a denial?

      Response: An approval of a fee waiver request means the request has been granted and the applicant need not pay the designated filing fee. Denial means that it has not been granted.

   b. Are multiple fee waiver applications (re-applications following a denial) from one person counted only once?

      Response: Each case is determined independently. Therefore a fee waiver denial on a particular filing or "bundle" (where the filing includes more than one application) applies to all forms included in the bundle.

10. **Question:** Could you please provide further analysis of the monthly fee waiver statistics beginning with the latest month (February 2008)?

    a. How are fee waiver requests broken down (type of application?), and what is the approval rate for each type of application?

       Response: All waivers are reporting on the same line in Performance Analysis System (PAS) and the G-22 reporting tool. USCIS does not believe that we should be comparing fee waiver approval rates across application types as the decision is made based on the information contained in the fee waiver request and not the application type.

    b. Do all four of the Service Centers consistently report on fee waivers each month?

       Response: Yes, all waivers are reported each month, but again, they are reported together on one line and not stratified by type.

    c. Are there significant differences in approval rates between different Service Centers, and does USCIS HQ track these differences?

       Response: Approval/denial rates are not captured or tracked by SCOPS.

11. **Question**: In late 1998 or early 1999, legacy INS issued a memorandum in which it permitted applications for adjustment of status under the Diversity Visa program to be filed 90 days in advance of an applicant's rank cut-off. (Memorandum from Michael A. Pearson, Executive Associate Commissioner, Office of Field Operations, *Acceptance of DV-related I-485 Applications During 90-day Period Preceding Cut-Off Number in the Visa Bulletin*, HQ 70/23.1 (no date provided). The INS memorandum referred to a State Department memorandum advising the INS that the DOS would "provide cut-off numbers for the Diversity Immigrant category 90 days in advance." The Department of State *Visa Bulletin* lists lottery rank number availability for the current month, as well as the following month. But, through this mechanism, a DV applicant has at most only 75 days advance notice. We are hearing of problems even using the current 75-day advance notice system, and we would like confirmation that the USCIS Lock Box (USCIS, P.O. Box 805887, Chicago, IL 60680-4120) is aware of the advance filing policy. Some attorneys report that such advance DV-Lottery I-485 adjustments (as described above) have been rejected under the premise that the DV-Lottery rank is not current. Is there a mechanism in place that can assure the 90-day advance notice?

    Response: The Chicago Lockbox accepts all Diversity Visa filings within the fiscal year for which the applicant has been selected. For example, the I-485 for an applicant with an FY 2008 selection letter that filed now would be accepted assuming all filing requirements, including submission of the appropriate fee and a completed signature were included. Discussion is ongoing to ensure that consistent application of USCIS memoranda and policies are followed regarding DV Visa application acceptance. If you believe a specific case has been improperly rejected, please provide specific information to us and we will be happy to look into the matter.

12. **Question:** The USCIS recently announced changes in the filing procedures and fees for the filing of an I-131 (Refugee Travel Document). Asylees filing for a RTD must now submit an $80 biometric fee. Also, asylees who have a pending adjustment of status application (I-485) can submit their I-797 receipt showing the application is pending or they are currently filing the I-485 and do not have to pay the filing fee for the I-131. Please clarify whether asylees who have a pending I-485 (filed after July 30, 2007) still have to submit the $80 biometric fee and those who are concurrently filing the I-485 and the I-131 have to pay two biometrics fees.

    Response: USCIS recently announced changes in the filing procedures and fees for the filing of an I-131, Refugee Travel Document (RTD). Asylees filing for a RTD must now submit an $80 biometric fee. However, if an asylee submits their I-797 receipt showing that they have pending I-485 application that was filed on or after 07/30/2007, then the applicant does not have to pay the filing fee or the biometric fee for the I-131. Thus, if the I-485 and I-131 are concurrently filed an additional biometric fee is not necessary for the I-131 application for an RTD.

13. **Question**: Previously, an individual was only required to be in the US on the date the I-131 re-entry permit application was filed. The new rules, which took effect March 5, require all applicants to provide biometrics at an Application Support Center (ASC). The March 5 USCIS Update strongly advises individuals to apply well in advance of their travel date, but since it was issued on the same date the change went into effect, we did not have an opportunity to warn our clients ahead of time to allow them to make their plans accordingly.

    The Update indicates that the revised I-131 instructions provide guidance on visiting a US Embassy or consulate for fingerprinting, but that information is not in the new instructions. The instructions indicate

that the application may be denied if biometrics are required and the applicant leaves the US. Is a visit to the Embassy or consulate actually a possibility for individuals who do not have time to wait for an ASC appointment before leaving the US? If so, how would such fingerprint/biometric visits be scheduled at an Embassy/Consulate abroad?

Response: The I-131 form instructions state that if "you are outside the United States and filing for a Refugee Travel Document (RTD), then you must submit two identical color photographs of yourself taken within 30 days of the filing of this application." While USCIS urges all applicants for a RTD to anticipate their need for the document *before* leaving the United States and to allow sufficient time for processing and adjudication, USCIS overseas offices do have discretionary authority to adjudicate an application for a RTD. See 8 C.F.R. § 223.2(b)92(ii). This option is not available on applications for re-entry permits. Applicants filing for re-entry permits must be physically present in the United States when they file the re-entry permit application. See 8 C.F.R. § 223.2(b)(1). On occasion, USCIS can deliver re-entry permits, as well as RTDs to the applicant at an overseas office. See 8 C.F.R. § 223.2(f), but filing the application for the re-entry permit must still be done while the person is in the United States.

A Lawful Permanent Resident (LPR) of the United States can travel outside of the US usually by using his or her passport from the country of his or her citizenship and complying with any visa requirements of the country of destination.

To re-enter the U.S., an LPR normally needs to present his or her Permanent Resident Card, Form I-551. A re-entry permit is needed for re-entry from absences outside the U.S. that are greater than one year but less than two years in duration. Thus, if an LPR anticipates remaining outside the U.S. for longer than one year, he/she will need to apply for a re-entry permit while he or she is in the U.S. See 8 C.F.R. § 223.2(b)(1), "Re-entry permit may be approved *if* filed by a person who is in the U.S. at the time of application"(emphasis added). An application is not complete until an individual has provided his or her fingerprints and photograph (i.e., biometrics).

The newly revised I-131 instructions also provide procedures for requesting an expedited ASC appointment for biometrics collection and for requesting expedited delivery of a travel document, where needed. USCIS believes that the majority of LPRs who live abroad will be able to re-enter the U.S. using their Permanent Resident Cards. Those LPRs that you describe are the few who currently live abroad, but who know that when they return to the U.S. they will need to apply for a re-entry permit because they plan to leave the U.S. again for more than a year and will need the permit to re-enter the next time they come to the U.S. USCIS encourages these LPRs to anticipate their need for the re-entry permit sufficiently in advance of their travel and, if necessary, to follow the procedures for obtaining an expedited ASC appointment where absolutely necessary. Alternatively, an LPR may apply for reentry to the U.S. using just the Permanent Resident Card for absences of less than one year. Therefore, if the LPR departs from the U.S while the I-131 is pending, but before biometrics are taken, then the adjudication of the I-131 re-entry permit application will not be affected as long as the applicant returns to the U.S. to attend the biometrics appointment before the first year of foreign travel has ended. We further note that if it is necessary, the LPR may make arrangements to have his re-entry permit delivered to him through a U.S. consulate or a USCIS office abroad. See 8 C.F.R. 223.2(f).