



Question & Answer

December 4, 2007

USCIS NATIONAL STAKEHOLDER MEETING, DECEMBER 4, 2007

Answers to National Stakeholder Questions

UPDATES

- The next stakeholder meeting will be held on January 29, 2008 at 2:00pm
- Extended Processing Delays

1. **Question:** Can you please provide the handouts with processing times on N-400s and I-485s, as well as fee waiver statistics, at the December meeting?

Response: Yes

2. **Question:** Under the revised fee rule that went into effect July 30, 2007, the I-192 application is not listed as a form that is eligible for a fee waiver. Given that applicants for T and U visas are exempt from paying fees for the I-914 and I-918 and many applicants for these visa types will also have to file I-192 inadmissibility waivers, will USCIS consider revising the fee rule to exempt applicants filing waivers in connection with T or U visa applications or, at least, include the I-192 application as a form eligible for a fee waiver?

Response: Thank you for your comment. We have been hearing of this as a concern in other venues although it was not raised as an issue during the fee rule comment period. Nevertheless, we understand the issue and we will take a look at it and let you know.

3. **Question:** Since announcing on October 1, 2006 that USCIS would be issuing NTAs for denied applications, how many NTAs have been issued by USCIS? Is participation in this policy discretionary with individual Field Offices or Service Centers, or is participation a mandate from USCIS headquarters? If this is a discretionary, which Field Offices and Service Centers are participating? Can you provide statistics on issuance of NTAs from each Field Office or Service Center?

Response: USCIS issued 23,211 NTAs in FY 2007. On average we referred another 813 aliens per month to USICE for NTA issuance. The issuance of NTAs was mandated by the Policy memo and participation is not discretionary for any office.

4. **Question:** We appreciate the availability of Nebraska Service Center and Texas Service Center for providing case status on delayed or problematic refugee/asylee adjustment or family reunification cases. However, in some situations the liaison is not able to address the issue in the case and even after multiple exchanges the problem is left unresolved. For these limited situations, can you please provide contact information for supervisors to whom we can contact regarding complex issues?

Response: As a matter of practice service centers do not release to the public its direct contact information for its adjudications supervisors. Centers do refer complex or unresolved inquiries to our adjudications supervisors at either the request of the customer group liaison or based on internal needs. Centers' preference is to continue to receive inquiries through the established customer channels allowing them to resolve questions/issues at the lowest possible levels. If you find your question/issue hasn't been resolved by our customer service representative then we ask that you please ask that your question/issue be elevated to a supervisor for second level review.

5. **Question:** Please provide a timeline for the issuance of regulations for adjustment of status from U nonimmigrant status or T nonimmigrant status?

Response: These regulations are currently under review at the Department level. We are unable to provide a timeline at this time

6. **Question:** Is USCIS able to issue Liberian DED clients proof that their EAD has been extended, such as a sticker to put on their EAD's? Our affiliates are reporting that many clients are having a lot of problems with their employers.

Response: USCIS will not issue extension stickers for Liberians with TPS-related EADs that have been automatically extended through March 31, 2009 pursuant to the Federal Register Notice dated September 19, 2007 (72 FR 53596). In an effort to ensure that EADs that expired on September 30, 2007 and that have been automatically extended through March 31, 2009 are accepted as evidence of employment authorization, and status, USCIS has provided information to employers and affected individuals in the notice, in other public materials posted on the USCIS website (www.uscis.gov), and through the Department of Justice's (DOJ's) Office of Special Counsel for Unfair Immigration-Related Practices. In addition, USCIS is working to provide community outreach to various organizations, such as DMVs, to educate them on the automatic extension.

7. **Question:** The instructions on the USCIS website for change of address in cases where the person has yet to receive a receipt number are very confusing. This question was posed last month and the answer given was to look at the website. Are there any other suggestions you can provide for people who do not have receipt numbers? (The website says to look on the back of the cashed check for the receipt number, but many clients with receipt delays have not had their checks cashed.)

Response: USCIS is working to update the information currently on the website concerning receipt delays and change of address information to make it more clear. Thank you for your feedback. If a customer has a pending application but has not yet received a receipt notice they must call the national customer service number at 1-800-375-5283 to request a change of address. When the customer calls the national customer service number they should specifically state that they have a pending application, have not yet received a receipt notice but would like to change their address. They should also be prepared to tell the customer service representative when they mailed in their application. The customer service representative will then issue a service request which will be routed to a service center having jurisdiction over that application. The applicant will receive a letter acknowledging the completion of their change of address request once his/her application is received and the change of address has been updated. Customers are required to complete a Form AR-11, notifying DHS that their address has changed. An AR-11 can be completed on-line without a receipt number.

8. **Question:** We are still concerned about Liberian green cards. Please provide a timeline for when USCIS hopes the security checks will be complete.

Response: We are unable to provide a timeline at this time.

9. **Question:** Liberian I-485 applications on hold: Please provide an update on the status of the Liberian refugee cases on hold and the status of the guidelines to screen for eligibility/admissibility in such cases.

Response: We are unable to provide an update at this time – the guidance has been drafted and is still pending review.

10. **Question:** Necessity of charging a biometric fee when using previously captured biometric data: One of our affiliates has many Salvadoran TPS clients who upon re-registering for TPS paid the I-765 filing fee and biometrics fee. These applicants are now receiving I-797 notices from USCIS that state “USCIS has received your Form I-821 and is currently processing your application. This notice informs you that USCIS is able to reuse your previously captured fingerprints and other biometrics. USCIS will run the same security checks and use your biometric data as in the past, however, it is not necessary for you to appear at a USCIS Application Support Center (ASC) for a biometrics appointment. The biometrics fee will not be refunded.”

Response: Regardless of whether an applicant is required to appear at an ASC, he/she is required to pay the biometrics fee or submit a fee waiver request if the applicant is age 14 or older. The fee will cover the USCIS costs associated with the use of the collected biometrics for FBI and other background checks. In addition, the fee helps pay for the costs of electronic storage of an applicants’ biometrics, maintenance of the systems and technology for storing and utilizing the fingerprints, and for paying costs associated with requesting the FBI’s reports to USCIS, among other biometrics-related procedures. USCIS fees fund the cost of processing applications and petitions for immigration benefits and services, and USCIS’ associated operating costs. See, e.g., INA, § 286(m); 8 U.S.C. § 1356(m) (allowing for full recovery of costs of providing adjudication and naturalization services). See also *Department of Justice Appropriations Act for FY 1998*, Pub.L.No. 1050119, 111 Stat. 2440, 248 (authorizing fingerprinting fee – now termed “biometrics fee” – for any application or petition requiring fingerprints).

11. **Question:** If USCIS is indeed using previously captured biometrics, why are applicants required to submit the biometrics fee? Is it not necessary for them to submit the biometrics fee if they’ve previously been printed/photographed at an ASC?

Response: As noted in the response to Question 10, the biometric fee covers many costs associated with the processing of biometrics beyond the mere physical collection of fingerprints and photographs at an ASC. Therefore, whenever an immigration benefit requires biometrics and the associated biometrics fee from an applicant, petitioner or beneficiary, the individual must pay that fee or submit a biometric fee waiver request. As noted, the biometrics fee is used for costs associated with updating of FBI and other background and security checks, electronic storage of the biometrics, maintenance of the biometric systems and technology, costs associated with processing FBI reports to USCIS, among other biometrics-related procedures. USCIS fees fund the cost of processing applications and petitions for immigration benefits and services, and USCIS’ associated operating costs. See, e.g., INA, § 286(m); 8 U.S.C. § 1356(m) (allowing for full recovery of costs of providing adjudication and naturalization services). See also *Department of Justice Appropriations Act for FY 1998*, Pub.L.No. 1050119, 111 Stat. 2440, 248 (authorizing fingerprinting fee – now termed “biometrics fee” – for any application or petition requiring fingerprints).

12. **Question:** Site visits for religious worker cases: How does USCIS determine when (the timeframe within which) it will do a site visit in a particular religious worker case? We have some religious worker I-360 petitions that have been pending for more than one year and are still awaiting a site visit/decision, yet we have other cases that were filed more recently (summer 2007) where site visits have already been conducted and a decision on the case has been made. Why do such discrepancies exist?

Response: The above referenced case types require security checks that are conducted by a Fraud Detection and National Security Unit. Site verifications are conducted on a case-by-case. There is no standard timeframe. The processing times of these security checks vary depending on the office conducting the security check, and are not currently available for publication. Once the cases are returned to an Adjudications Officer, they are adjudicated as soon as possible.

13. **Question:** Receipt Notice Delays. One of our affiliates filed N-400s in July 2007 for which receipt notices have yet to be issued. The N-400 applicants will lose their SSI benefits within two months. Is there a process whereby such applicants can request that USCIS expedite their case even though they do not have a receipt notice/number? If so, please outline that process.

Response: In recent months N400s have been receipted in record numbers at all four Service Centers. You indicate your N400 was filed in July so it is possible your N400 is outside current N400 receipt processing dates. Please contact the Service Center where you mailed your N400. We encourage you to provide specific information that will assist in a search for your application. If you are able to provide the exact date of delivery to the Service Center this will greatly assist in our search

14. **Question:** In September 2006, USCIS issued a memo outlining new procedures for issuing EADs to asylees, effective October 1, 2006. The memo describes how asylees granted by USCIS will receive the EAD card in the mail 7-10 days after their asylum grant. In addition, we were told of new procedures for asylees granted by immigration judges or following to join on I-730s. Asylees granted by immigration judges are to schedule an appointment at their local USCIS office to begin the EAD card production process, and are to receive the EAD within 7-10 days. Asylees following to join on an I-730 are to be processed for an EAD at the port of entry and are to receive the EAD within 7-10 days. Have there been any changes to these procedures? Are the processing times of 7-10 days still in effect? We are updating a publication that describes these procedures, and want to be sure our information is still correct.

Response: The procedures referenced above and the processing times of 7-10 days are still in effect. Please notify us if these processing times have been exceeded.

15. **Question:** Please provide an update about the number of Hmong and Montagnard adjustment of status applicants who 1) are on hold for material support; 2) are eligible for a waiver under the authority granted by Secretary Chertoff on October 22, 2007; 3) have been granted waivers; and 4) will remain on hold because they remain ineligible for admission. Please describe the procedures in place for determining whether an individual is eligible for a waiver and how waivers are considered and decided.

Response: These adjustment of status applications remain on hold pending the issuance of an implementation memorandum from the Deputy Director. Until that memorandum is issued, any applicants who may be eligible under the exemption authority exercised by Secretary Chertoff and Secretary Rice with regard to these groups will not be adjudicated. At this time, none have been granted an exemption under this authority. For those applicants who are ineligible for admission, a

decision will be made to proceed with adjudication of the application in the near future. The basic procedures for exercising this exemption authority are set forth Deputy Director Scharfen's implementation memorandum of May 24, 2007, Processing the Discretionary Exemption to the Inadmissibility Ground for Providing Material Support to Certain Terrorist Organizations. The process requires adjudicators to: 1) identify cases where the applicant is otherwise eligible for the benefit but for the material support bar; 2) complete a Material Support Exemption Worksheet analyzing the appropriate factors and making a recommendation as to the exemption; and 3) obtain 2 levels of supervisory review and concurrence.

16. **Question:** Available SIV visas for Iraqi and Afghani translators – Has the numerical cap been met for FY2008 and how does this affect those individuals who are already entered the US under other circumstances

Response: Approvals for the SIV Iraqi and Afghani translators have already exceeded the 500 cap for FY 2008. Although the cap has been reached, USCIS has not initiated rejection of newly filed I-360 petitions and continue to adjudicate them at this time according to their priority dates pending further legislative developments.

17. **Question:** What is the procedure for cases in which the principal asylee has become a United States citizen, or the aged out child is not covered under the provisions of the CSPA, or has gotten married? We have been getting denials of I-485's in such cases. In at least one of the cases, the nunc pro tunc asylum petition has been pending at the local asylum office for a couple of years.

Response: If the derivative asylee no longer meets the definition of a spouse or child of a refugee, he or she is ineligible for adjustment of status under the provisions of INA § 209(b)(3). The individual would need to apply for and be granted asylum as a principal to become eligible for asylum-based adjustment. If you have a specific case with a nunc pro tunc asylum application that has been pending for a couple of years, please provide the name and A-number to the Asylum Division.

- a. Does a derivative asylee who no longer qualifies under the statute because of the above reasons have to gain asylum status on their own merits or via the nunc pro tunc process prior to filing an I-485 application at the NSC? For several years we had clients who received notices from the NSC that a nunc pro tunc asylum application was needed.

Response: It is strongly advised that derivative asylees who no longer qualify under the statute or will soon no longer qualify gain asylum status as principal applicants either prior to filing an I-485 or soon after the filing of the I-485 application. USCIS will no longer hold I-485 applications pending the adjudication of nunc pro tunc asylum applications with the local asylum offices.

- b. During the backlog days, we were encouraged to file the nunc pro tunc asylum application directly with the local asylum office. In addition, many such nunc pro tunc asylum applications which were filed one or two years ago are still not adjudicated. Thus, we would like:
1. A clarification of what the process should be; and what can be done with what we consider unfair denials of I-485's by the NSC. These cases have been pending for several years when the rules for submitting the nunc pro tunc applications were different.

Response: The process remains the same except for the fact that USCIS will no longer hold I-485 applications pending adjudication of nunc pro tunc asylum applications filed with the local asylum offices. Derivative asylees who no longer qualify under the statute must gain asylum status as principal applicants by filing a nunc pro tunc asylum application with the local asylum office within their jurisdiction of residence. Our adjudicators are bound by the provisions of the statute in adjudicating benefits. If there are unadjudicated nunc pro tunc asylum applications, you should pursue a status inquiry with the toll-free customer service line.

- c. In some WLC cases, we have made a status inquiry about the nunc pro tunc asylum filing and were told that the case was being delayed because the applicant's files was at the NSC. Thus, there appears to be a conflict between the adjudication of the I-485 and the adjudication of the nunc pro tunc asylum application by the local asylum office.

Response: Please provide the name and A-number of these cases for follow-up.