



Question & Answer

September 26, 2007

USCIS NATIONAL STAKEHOLDER MEETING, SEPTEMBER 26, 2007 *Answers to National Stakeholder Questions*

- Question:** A few years ago, USCIS was working to extend the validity date of one-year Employment Authorization Documents (EADs), especially for refugees and asylees. Could you address whether there are still any plans to eventually extend the date, or if those efforts have been tabled? The one-year expiration continues to be a problem especially for refugees, who often face employment termination after one year. Showing the employer the memo on their employment authorization “incident to status” does not always solve the problem. While the Office of Special Counsel is a good resource, it seems unfortunate to need to bring them into these routine cases.

Response: Asylees already receive 2-year EADs. Providing initial EADs with 2-year expiration dates for refugees is under consideration.

- Question:** As you know, the Nebraska Service Center (NSC) has been forced to send out many Requests for Evidence (RFEs) in the last year for refugee Employment Authorization Document applications with insufficient photos taken by the overseas processing entities. This causes a huge increased workload for our refugee offices, as well as we are sure the service center. We understand that the Bureau of Population and Migration has been working with the NSC to try to address the problem, as well as working on improving photo machines overseas. Can you address any progress or efforts that are being undertaken to resolve these problems?

Response: USCIS inspected photograph samples from Bangkok, Nairobi & Istanbul. These samples were acceptable. Refugee Processing Center is continuing to solve photograph problems from Havana. NSC still has thousands of new photograph requests pending from the Affiliates which initially contained unsuitable photographs. According to the Bureau of Population, Refugees, and Migration new photos will be taken in the cases in October which will help to reduce the number of requests for evidence.

- Question:** Many of our affiliates have received I-797 (Notice of Action) notices regarding applications filed prior to the fee increase deadline indicating that the applications were either (1) “rejected” or (2) “held in suspense” due to insufficient fees. The notices indicate that the applications were received after the fee increase deadline even though the representatives/ applicants have proof that the applications were indeed filed/ postmarked prior to the deadline.

What action should an applicant/representative take in order to clarify these errors? Please provide specific instructions that applicants/representatives should follow in order to bring such cases to the

attention of the various service centers where they were filed. I.e. – what format should the filing be – letter, motion, etc. and to what PO Box at each Service Center should the filings go to?

Response: If the applicant feels an application was rejected in error, the applicant should resubmit the application to the same service center and address the envelope to the attention of the Case Resolution Unit (CRU). The applicant should include evidence and an explanation as to why the original rejection was in error.

For cases filed at the USCIS Lockbox, if you have a case that was impacted by this error, please resubmit the cases to the following address:

USCIS, 427 S. LaSalle, 3rd Floor, Chicago, IL 60605-1029
Attention: Dennis Sharkey
DO NOT OPEN IN THE MAIL ROOM

4. **Question:** At the last USCIS HQ-Community Based Organization meeting, USCIS stated that it was in the process of finalizing a memo to the field instructing its local district offices on how to extend parole for Cuban parolees. The new policy will allow individuals to obtain a parole extension up to 90 days prior to their existing parole expiration date. What is the status of this memo? Advocates have been raising concerns about this issue since January of this year and are eagerly awaiting a solution to this problem.

Response: The policy is still under review, however as an interim measure local district and field offices are empowered to extend parole for this caseload.

5. **Question:** Please explain how fee waivers filed with applications sent to Service Centers or the lockbox are adjudicated. How do such applications make it by the contractors that take in the applications?

Response: Fee waivers are decided by USCIS employees. Contractors simply identify fee waiver requests and bring them to the attention of the appropriate USCIS employee. If the applicant qualifies for a fee waiver, it is granted by adjudicator and the application is processed as Fee Waived. If the applicant does not qualify for a fee waiver, the request is rejected by the adjudicator and the application package is returned to the applicant with an explanation (i.e., rejection notice).

6. **Question:** In response to a recent inquiry to USCIS HQ about where to file a renewal I-765 application for employment authorization for an individual who has a pending adjustment of status application (I-485) based on an approved I-360, Special Immigrant Religious worker petition, USCIS HQ provided the following guidance:

“An I-765 with a pending I-485 based on an approved religious worker I-360 should be sent to either TSC or NSC depending upon the applicant’s place of residence. Even if the I-485 is pending at an office other than TSC or NSC, the I-765 should continue to be sent to either TSC or NSC depending on the applicant’s place of residence.”

USCIS HQ also stated – “CSC has no problem with accepting and processing the C9 (employment authorization) and AP (advanced parole) applications associated with our pending I-360-based I-485s.”

Based on this response, is it more expeditious/appropriate to file c(9) I-765 and Advance Parole applications with the CSC if that is where the religious worker’s underlying I-485 is?

Response: Yes, if the alien’s adjustment application (I-485) is already filed with the California Service Center (CSC), please file any employment authorization application (I-765 under C(9)) with the CSC.

7. **Question:** USCIS recently issued a proposed rule re: the renewal of permanent resident cards without an expiration date. The background to the proposed rule states, “USCIS believes that an application period of 120 days will be sufficient for affected LPRs to learn of the new requirement and to complete the required form I-90. USCIS plans to conduct an extensive outreach program to alert the affected group of LPRs of the need to apply for new cards.” We do not believe 120 days is sufficient notice. If this outreach is a function of the ICS division, could they explain in detail how they plan to conduct such outreach?

Response: USCIS is developing an agency-wide outreach strategy that will include multiple components of USCIS. Since the rule is only proposed at this time, USCIS has not finalized those outreach plans

8. **Question:** If a derivative asylee files an adjustment application (I-485) but the principle spouse naturalizes before it is adjudicated – is a nunc pro tunc asylum application (I-589) possible in this situation?

Response: A derivative asylee whose spouse or parent naturalizes prior to the approval of an adjustment application (I-485) may apply for asylum status as a principal applicant, and the case will be processed under current policies and procedures.

9. **Question:** Procedures for adjudicating Adam Walsh cases: The February 8, 2007 Aytes Memo (HQDOMO 70/1-P) puts in place a procedure whereby HQ must approve a family-based petition where the Petitioner committed certain acts against a minor prior to final adjudication either by the District Office or by the Service Centers.

- a. Is there any notification sent to the Petitioner/Attorney of record notifying us when the case has been received by HQ?
- b. Is there a time-line for adjudication of these cases?
- c. Will HQ notify Petitioner/Attorney of the decision, or will the decision come from the District Office/Service Center?

Response: The procedures for adjudicating Adam Walsh cases when the petitioner has committed a specified crime against a minor are still in development.

10. **Question:** If an I-485 applicant does not submit an employment authorization application (I-765) or advance parole request (I-131) with the initial adjustment (I-485) application (because s/he forgets, doesn't need the documents then, doesn't know to do so), but needs an employment authorization document or advance parole in the future, the applicant should not have to pay the I- fee since they are included in the I-485 filing fee. In such instances, how can applicants file the I-765/I-131 without fee?

Response: A subsequent fee is not necessary to file for any interim benefits based upon a pending adjustment (I-485) application filed under the new fee rule. The applicant could file an I-765 and or an I-131 without fee including evidence that an I-485 has been filed under the new fee such as a copy of the I-797 receipt notice for the I-485.

11. **Question:** One of our affiliates received a petition (I-130) Approval Notice (Form I-797 – Notice of Action) with the following statement on the bottom of the notice: "At the time of this approval notice, this alien is Code H." The petitioner in this case is an Lawful Permanent Resident (LPR) and the beneficiary is the LPR's spouse. What does "code H" refer to?

Response: This is an internal notification mechanism between USCIS and the Department of State.

12. **Question:** Lawful Permanent Resident (LPR) of the United States, Mr. X, immigrated to Canada and eventually became a Canadian citizen. Mr. X hasn't resided in the United States for several years and he never took any official steps to relinquish his LPR status. Mr. X's U.S. citizen father filed a first preference immigrant visa petition for Mr. X several years ago, and the priority date for that petition is now current. On his last entry to U.S., Mr. X was admitted as a tourist, but USCIS records would presumably show him to be an LPR since abandonment of his LPR status has never been adjudicated. Our question is: Is there any process that Mr. X needs to follow in order to relinquish his prior LPR status before pursuing residency anew via an application for adjustment of status based on the approved I-130 filed by his USC father?

Response: The procedural path to obtain a determination of abandonment would be to obtain such a finding via an I-407, *Abandonment of Lawful Permanent Residence Status* at a port of entry. After such a finding, he is free to proceed toward lawful permanent residence.

13. **Question:** Background checks and processing delays. Please provide any updates on USCIS' efforts to work with the FBI to reduce the current backlog of cases on hold due to pending FBI name checks.

Response: USCIS is continuing to work with FBI to improve this process.