



Questions and Answers

USCIS Service Center Operations – American Immigration Lawyers Association (AILA) Teleconference

February 23, 2011

Overview

On February 23, 2011, the USCIS Service Center Operations Directorate hosted an engagement with AILA representatives. USCIS discussed issues related to contacting the Service Centers, Form I-824 processing, Form I-129, G-28 representation and case inquiry, fee waivers, H-1B and L-1 classifications, I-140 transfers, and the ability to consolidate filings. The information below provides a review of the questions solicited by AILA and the responses provided by USCIS.

Questions and Answers

Question 1: It appears that there are still some problems respecting SCOPS responses when a customer contacts SCOPS with an email after unsuccessfully contacting the Service Centers. As an example, in one case the member contacted the NCSC on 12/14/2010 and received a response that required follow up to SCOPS and on 1/14/2011 the member emailed SCOPS and did not get a response to date. Is this system only to be used when the NCSC does not respond at all or also when the NCSC provides a response that is not helpful? AILA appreciates clarification on this issue.

Response: As the automated reply from SCOPSSCATA Follow Up e-mailbox indicated, the purpose of this e-mailbox is to assist petitioners, applicants, or their authorized representatives who have contacted the National Customer Service Center (NCSC) number (1-800-375-5283) with an inquiry but their inquiry was not addressed within 30 days or feel that the response received from the NCSC was inadequate. An inquirer will not receive a response from this mailbox if he or she did not first try to resolve the issue by contacting the NCSC, or if he or she is not the petitioner, applicant, or a designated representative for the case. If more than 30 days have passed since the NCSC was contacted and the issue has not been resolved or explained, an inquirer then may send an e-mail to the Service Center that has jurisdiction over the case in question at the designated e-mail address listed on the USCIS Update (posted 8/10/09). If the inquirer does not receive a response within 21 days of contacting the appropriate Service Center, he or she may send an e-mail to the SCOPSSCATA e-mailbox. In order to assist the inquirer in a timely manner, the following information must be included with the inquiry:

- The Service Request Management Tool (SRMT) inquiry number that was provided by the NCSC. If the inquirer contacted the NCSC but was informed by NCSC that they are unable to complete an SRMT, a brief explanation needs to be included;
- The date the inquirer contacted the NCSC;
- The name of the applicant/petitioner/beneficiary and receipt number and/or A-number of the case in question; and
- If available, the name of the NCSC customer service representative with whom the inquirer spoke.

If AILA has an example of inquiry where the inquirer followed the established protocol and did not receive a response, please provide it to us so that we may review.

Question 2: Does SCOPS have information as to why the posted processing times for I-824s are in excess of 8 months?

Response: Our records indicate that USCIS service centers are processing the I-824, *Application for Action on an Approved Application or Petition* within the established 3-month processing time goal. For those I-824s that are requesting action on approved application/petition, centers are within the posted processing time. While the I-824 may be filed concurrently with the underlying application or petition, the I-824 may not be adjudicated until the processing of the underlying application or petition has been completed. For instance, in a case where an I-824 is submitted in conjunction with a pending I-485, *Application for Adjustment of Status*, USCIS cannot finally adjudicate the I-824 until such time that the underlying Form I-485 is readily approvable. Moreover, depending on the circumstances surrounding the delayed processing of the underlying application or petition, the approval of that application or petition may be delayed significantly; thus, any I-824 application submitted in conjunction with the application or petition may cause the I-824 processing time to appear delayed as well.

Question 3: AILA recently conducted a seminar on the Export Control questions that have been added to the I-129 and this seminar generated the following questions respecting L-1Blanket Petitions:

- a. The I-129S form does not have the same export controls attestation requirement as the I-129 form. Are blanket L visa applicants required to provide export control information?

Response: Currently, Form I-129S does not require an attestation on export controls.

- b. Does the export control certification have to be filled out in the H-1B renewal context if the same beneficiary is doing the same job as stated in the original I-129?

Response: The instructions for Form I-129 indicate that it should be completed for all H-1B petitions. There are no exceptions in the instructions for extension petitions.

Question 4: Does SCOPS have any update respecting the new privacy protection procedures and what type of information may be communicated to an AILA liaison volunteer?

Response: USCIS is authorized to release information on cases to the applicant, petitioner or to the G-28 attorney or accredited representative. The CSC accepts case-specific inquiries submitted by the AILA liaison and provides responses to the G-28 attorney by phone or email. CSC will not release case specific information to the AILA liaison unless the AILA liaison presents a properly executed G-28 from the applicant or petitioner that corresponds to the inquiry.

Question 5: AILA members are reporting confusion respecting some of the new questions on Form I-129 as a result of the absence of instructions for those questions. Could SCOPS please clarify the following:

- a. Could SCOPS confirm that the Service considers the term “working off-site” – irrespective of where it appears on Form I-129 and its various supplements - to mean working at a client or third-party site as indicated by the instructions relating to Part D of the H-1 Data Collection Supplement?

Response: SCOPS interprets the term “working off-site” to mean that the beneficiary will be working at a location other than the petitioning employer’s work site.

- b. Given this new question respecting itineraries, does the Service still follow the December 29, 1995 Memo by Michael Aytes respecting when an itinerary is required and what its contents should be?

Response: With regards to itineraries, the most recent guidance detailing the itinerary requirement is the January 08, 2010 Neufeld memo, *Determining Employer-Employee Relationship for Adjudication of H-1B Petitions, Including Third-Party Site Placements* – particularly page 8, and page 10, part D.

We are reviewing the December 29, 1995 Aytes memo as part of the ongoing H-1B policy review process.

Question 6: Could SCOPS please remind the field that only one fee waiver fee is required per household although each household member must be identified on and sign the application. AILA members are reporting kickbacks of fee waiver requests for failure to submit separate requests for each family member.

Response: SCOPS will bring this matter to the attention of the field offices and lock boxes.

Question 7: Now that the H-1 Cap has been reached, could SCOPS clarify how it treats (and counts for cap purposes) Singaporean or Chilean H-1s it receives during the remainder of FY 2011?

Response: USCIS will continue to accept these cases. To help expedite the process and ensure your Singaporean or Chilean H-1B case will not be rejected, write “C/S Cap” in the top margin of Form I-129.

Any unused FY 2011 Singaporean or Chilean H-1B numbers will be added to the FY2012 regular H-1B cap.

Question 8: Does SCOPS have an update on the issue raised on the last agenda respecting biometrics for re-entry permits? On the last call, SCOPS indicated that it was consulting with ESD to see if it is possible to establish a policy where the applicant can take the receipt to the ASC to get expedited processing of the fingerprints.

Response: The Instructions for Form I-131 provide detailed information regarding how to request expedited adjudication. It states that applicants should mark the outer envelope of the Form I-131 package as expedite and include two prepaid mailers for delivery of both the ASC appointment notice and the travel document. In addition, if the applicant provides an email address or fax number, then the Nebraska Service Center will be able to fax the ASC appointment to the applicant. The ASC is willing to accept this duplicate copy of the appointment notice. If the applicant needs to expedite the I-131 after filing, then the applicant should contact the customer service phone number or make an INFOPASS appointment at their local office.

Question 9: AILA Members are reporting a dramatic increase in L-1 RFEs in FY 2011, especially in factual patterns that had previously resulted in approvals. AILA is concerned about the impact of this trend on the business community, investment in the US economy and off-shoring of jobs. AILA is unable to determine a possible cause for this increase, given that the increases are being reported by the same practitioners who previously had not had their filings subjected to RFEs on similar facts. As a result AILA has two questions:

- a. Does the Service have current statistics, i.e. FY 2011 to date, respecting the total number of L-1 filings and the total number of RFEs related to L-1s? What about the total number of withdrawals of L-1 petitions post RFE? If statistics are available what are these numbers?

Response: Total number of L-1 filings for FY11 to date (through February 14, 2011) is 13,181. Total number of L-1 RFEs for FY11 to date (through February 14, 2011) is 4,057. The total number of post-RFE L-1 withdrawals for FY11 to date (through 2/16/11) is 316.

- b. Has there been a change in policy respecting the adjudication of L-1 petitions that could account for the increase in RFEs? If so what is/are those changes?

Response: Even if there has been an increase for the same time period over that of last year, there has not been any change in adjudication procedures from the previous year.

Question 10: Does SCOPS have an update on whether it is possible to issue a notice for employment based cases that are referred for interview which indicates the reason the interview has been scheduled so that applicants are better prepared for these interviews and cases do not have to be continued?

Response: The National Benefits Center, which is under the Field Operations Directorate, is responsible for scheduling interviews for employment based I-485 cases. Therefore, SCOPS has directed this question to the Field Operations Directorate for further inquiry.

Question 11: Members report transfers of (long pending) I-140s from TSC to NSC as of February 3, 2011. Could you confirm that a number of files are being transferred to NSC to help TSC become current on processing times? If so, can you confirm that the transferred files will be placed in the queue by receipt order?

Response: There was a transfer of I-140s to NSC from TSC in February. These cases are being placed in the NSC queue based on their filing date and will be adjudicated in first in first out order.

Question 12: The Neufeld memo respecting Successors in Interest mentions the ability to consolidate filings. What is the procedure that petitioners should use to request it?

Response: The procedure outlined in the August 6, 2009 Memo (HQ 70/6.2 AD 09-37), titled [*Successor-in-Interest Determinations in Adjudication of Form I-140 Petitions; Adjudicators Field Manual \(AFM\) Update to Chapter 22.2\(b\)\(5\) \(AD09-37\)*](#) is still the process that USCIS follows to consolidate filings. See specifically, #4 on pages 12 and 13 of the memo.

The process can also be found in the AFM, Chapter 22.2(b)(5)(F) which states:

Consolidated Processing of Multiple Successor-In-Interest Petitions at a Service Center

Each successor-in-interest petition must be evaluated according to the three factors previously

outlined in AFM **Chapter 22.2(b)(5)(B)** and will be adjudicated on its own merits with regard to eligibility for the requested visa preference classification in the petition. However, multiple filings based on the same transfer and assumption of the ownership of the predecessor by the successor may have duplicative evidence provided in each case to establish Factor #3.

In the interest of efficiency and consistency, Service Center directors may elect to accept consolidated evidence, e.g., one copy of the SEC Form 10-K for 20 petitions instead of 20 copies the SEC Form 10-K, coordinate the adjudication of multiple pending successor petitions so that the petitions are adjudicated at a single Service Center and/or at the same time, to the extent that other pressing work priorities permit.

Petitioners can initiate a request for the consolidated processing of multiple successor-in-interest cases affected by the same transfer of ownership through the National Call Center.

Note: The decision to grant a request for consolidated case processing rests solely with the Service Center director(s) with jurisdiction over the filing of Form I-140 petitions based upon the location of the intended employment of the affected alien beneficiaries.

USCIS issued additional information on October 14, 2009 with a Questions and Answers document titled, [Consolidated Processing of Successor-in-Interest Petitions, Tuberculosis Testing Requirements, I-140 Filing Tips, and Fingerprint Issues](#). Questions and answers relating to the consolidation process are discussed in detail on pages 1 and 2 of the document.