

January 26, 2006

Jane Arellano, District Director  
US Citizenship and Immigration Services (USCIS)  
300 N. Los Angeles Street  
Los Angeles, California 90012

Dear Ms. Arellano:

The following items have been proposed by members of the American Immigration Lawyers Association, Los Angeles County Bar Association-Immigration Section, Mexican American Bar Association, San Fernando Bar Association, Century City Bar Association, and Cuban American Bar Association for discussion with you at our January 26, 2006 meeting:

ADJUSTMENT OF STATUS

- 1) Too frequently cases are denied for failure to respond to I 72s issued at the time of interview where the additional evidence and documents were submitted. Although the Service will entertain a MTR and acknowledge it as Service Error, such a process is long and the wait is frustrating. Can we devise a method to minimize this situation and to ensure the evidence and documents reach the files?

**Sany Alegria: Once the file has reached the 87th day the file we be reviewed and if the documents are not in the file the case will be denied. The mail service is slow at CIS so it is recommended that the documents be sent well in advance or personally delivered.**

- 2) How can a bed-ridden applicant for I-485, (immobilized by paralysis/stroke) comply with a biometric request? What is CIS's procedure, if one exists, of taking the applicant's fingerprints and how will the I-485 interview be handled?

**Martha Nguyen: If the person needs to be fingerprinted, notify Dennis Perry that the person can not attend the appointment and a mobile fingerprint machine will be taken to the home where the person is living.**

**For the I-485 interview notify Sanny Alegria or Ellen Woo and an officer will go the applicant's home to conduct the interview.**

- 3) While the Santa Ana Sub-Office has been great at issuing interim EAD's for applicant's with I-765's pending over 90 days with the California Service Center, applicants for family based adjustment of status who request interim EAD's after I-765 applications have been pending with the National Benefits Center (NBC) for over 90 days are being told no interim EAD's are being issued prior to the

transfer of the case to the District Office. Is this a correct answer or policy? If not, how can the applicants be assured the interim EADs will be processed when they appear for their INFOPASS appointments? What documents should the applicant take to the INFOPASS appointment to process the interim EAD at LADO or the sub-offices?

**Mary Kozlowski: An interim EAD will be issued by the 90 days as long as there is no hold and the biometrics have been completed.**

**If there is a hold and there is an urgent need for EAD, applicant must present documents regarding the urgency and it will be determined on a case by case basis. Problems with the biometrics is not considered a processing hold.**

**The 90 days start from the actual date of receipt-the control date.**

- 4) How does one handle an I-864 if a young couple (USC and alien spouse) are living with the parents of the alien spouse? If all are living in the same household but the parents are financially independent and do not need support from USC or the alien spouse, does the I-864 affidavit of support from the USC petitioner require the total number of household members be listed as 4 (USC, alien spouse, parents)? If this is the case, can the parents' income be allowed (since they are considered related "by marriage" to the sponsoring USC as in-laws) without making the in-laws being the joint-sponsor other than signing the I-864A?

Another alternative would be listing the household number of the USC and the alien spouse being 2 and then have the parents sign the I-864A? Which option is the acceptable one?

**Sanny Alegria: You need to mention everyone living in the household. Parents must be listed in the I-864 and income disclosed.**

INFOPASS QUESTIONS

- 5) At the July 6, 2005, District Director's meeting, Dianne Armenteros advised that respondents in Immigration Court proceedings with cancellation of removal or adjustment of status applications, pending with the Immigration Court can apply for and receive same day EAD's via infopass. However, signs in Room 1001 continue to advise that all such I-765 applications must be submitted by mail to the District Office's Information Unit's P.O. Box 809. Please confirm whether the same day I-765 applications can be processed via an infopass appointment for applicants in immigration court proceedings. If so, can the signs to the contrary in Room 1001 be taken down or modified?

**Dianne Armenteros: Applicants will be issued same day EAD's via infopass. The signs in Room 1001 have been taken down.**

- 6) Many individuals granted permanent residence by Immigration Judge's have already submitted requests to be issued evidence of their status, either with East Los Angeles, or more recently, with Room 1001. Subsequently, on December 22, 2005, in the Santillan v. Gonzales nationwide class action lawsuit, the Judge ordered USCIS to issue such individuals either their permanent resident alien cards or temporary evidence of lawful permanent resident status within 60 days (or 30 days for individual granted LPR status by the EOIR on or after April 1, 2005). However, the injunction instructs such individuals to make and appear at an infopass appointment to start the running of the 60 or 30-day clock. Is it necessary for an individual who has ALREADY presented a copy of the Immigration Judge's order granting relief prior to this order to appear again at an infopass appointment? Would it be possible to allow such individuals and/or their attorneys to comply without a personal appearance in Room 1001? May we suggest using a fax system?

**Dianne Armenteros: Personal appearance by the applicant is mandated. The appearance starts the clock.**

**For the Santa Ana and San Bernardino (Sub-offices) attorney can coordinate with Dianne.**

- 7) Some LADO examiners are requiring adjustment of status applicants in employment based cases to prove that they are currently being paid the wage in the ETA-750 prior to granting permanent residence. The prevailing wage is only required to be paid upon the alien obtaining resident status and this distinction is noted in the Bill Yates Memo, dated May 12, 2005.

**Sanny Alegria: LADO examiners can not require that the alien show proof that they are currently being paid the wage on the ETA's.**

**However, LADO examiners will be justify to request proof that the employer will pay prevailing wage when there is a big discrepancy between the amount the alien is currently making and the prevailing wage.**

## LEGALIZATION

- 8) If a person has a pending LIFE case, will a new filing of Legalization, filed prior to December 31, 2005 be withdrawn automatically if the LIFE case is granted?

**Sanny Alegria read out answers prepared by Chris Folwer. Chris Fowler was out sick: No, both applications will be adjudicated independently.**

- a. If the person had a LIFE case on appeal with AAO, will the LIFE case be decided before a new Legalization interview is adjudicated? If not, what is the procedure that will be followed when two legalization cases are pending at the same time?

**Sanny Alegria: Where a decision has been reached and an appeal filed both applications will be adjudicated independently. If I-485 has been decided, officer will request that I-687 be withdrawn.**

- b. What can be done with FOIA to get a LIFE/CSS/LULAC file from the Unit before a Legalization interview is scheduled? FOIA requests are now taking more than a year.

**Sanny Alegria: FOIA request are taking 20 days. If the request takes longer do infopass and all inquiries will be forwarded to National Records Center.**

- c. How many Legalization cases were filed before December 31, 2005? Is there a way to determine how many legalization applicants have dual LIFE cases pending?

**Sanny Alegria: We don't have a total. 2000 cases will be forwarded to East L.A. Office to finalize adjudication.**

**If you have any more questions Chris Fowler can be reached at (213) 830-5400**

212(C) BEFORE D.D.

- 9) Can a lawful resident alien convicted by guilty plea prior to April 24, 1996 affirmatively file a form I-191 [212(c) application], with the District Director (CIS) under 8 CFR Section 212.3(a)(1)? If yes, please discuss the procedure for filing these cases and how these cases will be processed and prosecuted by CIS.

**Jonathan Katz: The regulations provide that the local D.D. has authority to adjudicate these applications. Applications must be drop off at room 8323. Ellen Woo will accept fee'd applications. The procedures are done on a case by case basis. No information on how the adjudication will play out at the D.D. level or processing time.**

TREATMENT OF CRIMINAL ISSUES IN ADJUSTMENT OF STATUS AND NATURALIZATION

- 10) Please clarify the District's Position on expunged or diverted first time simple possession offenses or lesser included controlled substance offense (possession of paraphernalia/use of a controlled substance) in light of Lujan Aremandariz v. INS, 222 F.3d 728 (9<sup>th</sup> Cir. 2000), Cardenas-Uriarte v. INS, 227 F.3d 1132 (9<sup>th</sup> Cir. 2000) and Dillingham v. INS, 267 F.3d 996 (9<sup>th</sup> Cir. 2001)?

**Jonathan Katz: An expungement or diversion on a simple possession or lesser included controlled substance offense is not a basis for removability.**

NATURALIZATION

- 11) How do we inquire on a naturalization case filed over a year ago and no interview has been scheduled? The 6<sup>th</sup> floor attorney window just tells us to wait. Is there an officer we can ask?

**Wade Prater: If the background investigation is pending there is nothing the officer can do about it. Applicant must wait until all background investigations are completed.**

- 12) We have received complaints regarding the mistreatment of applicants and attorneys at the El Monte Citizenship Office. What is the method to document complaints or grievances against Citizenship Officer's in El Monte?

**Mary Esther Johnson: File a complaint with the duty supervisor, preferably on the day the mistreatment occurred. If that doesn't work, then file a complaint with the D.D.**

**The supervising officers in El Monte are Fernando Jacobs, Mary Ribare, Angela Pacheco.**

CARRY OVER QUESTIONS

- 13) In *Bona v. Gonzales*, 425 F.3d 663 (9th Cir. Sep 30, 2005), the Ninth Circuit Court of Appeals joined the First and Third Circuit Courts of Appeals and invalidated the regulation for prohibiting arriving aliens to adjust. Does the invalidation of 8 C.F.R. § 245.1(c)(8) return us to the scheme, which existed prior to IIRIRA which required arriving aliens in proceedings to apply for adjustment of status with the District Director? As a result of the First Circuit's decision in *Succar v. Ashcroft*, 394 F.3d 8 (1st. Cir. 2005), the USCIS Boston District Office has already announced that it will accept adjustment applications from arriving aliens in removal proceedings since NBC is not up on this and administratively closes these files. Will LADO do the same by accepting these filings and reopen the already administratively closed cases forwarded to LA by NBC?

**Jonathan Katz: Yes, LADO will be accepting adjustment of status applications where the applicant is an arriving alien and treat them like any other adjustment of status. The application must be filed with the Chicago Lock Box.**

- 14) Since the Ninth Circuit's decision in *Perez-Gonzalez v. Ashcroft*, 379 F.3d 783 (9th Cir. Aug 13, 2004) has been decided, will LADO follow this ruling and on its own motion, reopen the erroneously denied EAD files sent by the NBC? Under these circumstances, can such applicants request, via an InfoPass appointment or otherwise, that the District Office immediately reopen the cases to issue the EADs? (NEW QUESTION BUT REALTED): At the July 28, 2005 monthly AILA meeting in Cerritos, District Director Jane Arellano advised that the NBC, as an agent of USCIS Los Angeles District Office, would follow the decision of this case and accept concurrently filed I-212, I-484, I-485A, I-601, and I-765 applications from 245(i) adjustment applicants who were previously removed but returned to the U.S. without inspection. However, the NBC has summarily denied many such applications without forwarding the cases to the District Office. Furthermore, although the NBC has agreed to forward such cases to the District Office in the future, it has ignored requests to reopen and forward previously denied applications. Under these circumstances, can such applicants ask the Los Angeles District Office directly to reopen these denied applications? If so, where and how should such a request be made for a Service Motion to Reopen?

**This question was carried over for next meeting.**

- 15) The San Bernardino Office of U.S. Citizenship and Immigration Services forbid cell phones of any type in the building. The guards are not allowing the public to bring in any type of cell phone, even the ones that do not have cameras. They say the waiting room is too small and yet it is larger than Santa Ana's. Why does this policy only exist in San Bernardino?

**Sany Alegria: San Bernardino Office will be allowing the public to bring in cell phone, however, usage of the phones are restricted to lobby and outside. Cell Phone will not be allowed to be used in the waiting room.**

**UPDATE ON STAFFING AND POLICY CHANGES AND CURRENT PROCESSING TIMES:**

- a) Have there been any staffing changes?

**Chris Fowler is now heading the Legalization Office in East L.A.**

**Fernando Jacobs was moved to El Monte.  
Dan Clippinger is now at Room 8540**

- b) Have there been any policy changes?

**There was an internal memo where it instructs examiners that if applicant does not show up on the date interview is scheduled application will be denied for no show. Officers will no longer reschedule appointment.**

**If applicant knows he/she can not attend the interview he/she must request the interview to be rescheduled through the unit supervisor. The request must be done on or before the day of the interview and will be rescheduled only for a valid reason.**

- c) For adjustment of status applications for interviews at the Los Angeles District Office: **Approximately 6 months.**

- 1) What are the current processing times for I-130 and I-751?

**I-130 – IJ cases processing applications filed from 10/05 through 2/06. CSC referral cases currently processing 4/30/01.**

**I-751 (East Los Angeles) – January 2003.**

**I-140 (transferred cases) – As soon as they come in.**

d) For adjustment of status applications pending in Santa Ana: **June 2005.**

1) What are the current processing times for:

I-130 –

I-140 (transferred cases) - **As soon as they come in.**

e) For adjustment of status applications pending in San Bernardino: **May 1, 2005**

1) What are the current processing times for:

I-130 –

I-140 (transferred cases) –

For Naturalization applicants:

1) What is the current processing time between the date of filing and the preliminary interview? **6-8 months**

2) What is the current processing time between the date of passing the preliminary interview and the Naturalization ceremony? **30-60 days from the date of last interview.**

For LIFE cases:

1) How many interviews have occurred? **648**

2) Second interviews? **44**

3) How many have been approved? **256**

4) How much notice is being given? **About 3 weeks**

For LEGALIZATION cases:

1) How many interviews have occurred? **180**

2) Second interviews? **No 2n interviews**

3) How many have been approved? **51**

4) How much notice is given? **2-3 weeks notice**

Respectfully submitted,

JOHN AYALA

Treasurer

AILA SOUTHERN CALIFORNIA CHAPTER

