

September 11, 2007

Ms. Jane Arellano, District Director
District 23
US Citizenship and Immigration Services (USCIS)
300 N. Los Angeles Street
Los Angeles, CA 90012

Dear Ms. Arellano:

The following items have been proposed by members of the American Immigration Lawyers Association and Los Angeles County Bar Association-Immigration Section for the September 27, 2007 meeting.

ADJUSTMENT OF STATUS & I-130 UNIT

1. How does the District Office process adjustment of status cases filed under Matter of Garcia (June 16, 2006) pursuant to Section INA Section 203(b)(3) of CSPA? If the National Benefits Center rejects the I-485 filing, will the LADO accept the I-485 for filing? Will the LADO adjudicate these cases? Will the LADO deny these cases and issue an NTA?

USCIS Response (S. Alegria): This is a four part question:

- a) Matter of Garcia is an unpublished decision, and cannot be used as precedent;
- b) NBC improperly rejected filings can be brought to the attention of a supervisor in Room 8024. As discussed during the AILA meeting on February 22, 2007, we have a process in place for contacting the NBC and addressing filing issues. The officer assigned to this duty is Mr. Larry Hilke in Room 8024, his supervisor is Gloria Ramirez, and Robin Pignatelli is the new Section Manager of this unit;
- c) The Field Office will adjudicate these cases once the Lockbox has accepted the fee, issued the receipt, generated all appointments for background checks, and the case has been placed in queue for interview in a field office; and
- d) Yes, an NTA may be issued if the applicant fails to establish that he/she is eligible for the benefit sought.

2. What is the 245 Unit presently doing with cases like Acosta v. Gonzales? Are they still being held in abeyance? When might the district be receiving instructions as to how to proceed with these cases?

USCIS Response (R. Pignatelli): HQ has not directed the field to go forward with the adjudication of these cases; therefore, these cases continue to be held in abeyance.

3. During one of our last meetings we were informed that the same officers who adjudicate I-130s also adjudicate I-751s; could the same officer handling inquiries for AOS cases respond to I-751 inquiries as well?

USCIS Response (S. Alegria): Duty officers are assigned within the respective units, and they will respond to I-751 inquiries pursuant to their A-number (Even numbered referrals go to Robin Pignatelli in Room 8024, and odd numbered referrals go to Wade Prater in Room 8509).

4. For AOS cases transferred to the I-130 unit, formerly in room 2050 for further processing after the initial interview in room 8010, how long will it take the I-130 unit to make a decision on a case after its bona fide marriage interview? If a case is pending in I-130 unit far beyond normal processing time, what is the proper procedure for making an inquiry when personal, letter, fax and InfoPass inquiries have been made without positive results?

USCIS Response (R. Lyons): Please refer to the answer to Question #3. Effective October 1, 2007, Room 2050 will be used as a HQ training area for new immigration officers. I-130 petitions, including those filed on behalf of individuals in Immigration Proceedings, will be adjudicated by all of the officers in the Adjustment of Status units. If you have been unsuccessful in obtaining information about a particular case through InfoPass, please contact one of the Section Managers over the Adjustment of Status Units - Wade Prater or Robin Pignatelli. Please be aware that all I-130 inquiries through InfoPass will be handled in the same manner that I-485 inquiries have been handled (even-numbered referrals will be sent to Room 8024, and odd-numbered referrals will be sent to Room 8509).

5. How long does it take for Adjustment files to be transferred from the California Service Center to the L.A. District Office? An officer told us it takes about 5 weeks, which seems a long time for a file to move from Laguna Niguel to Los Angeles. Also, does the transit time differ if the file is for an expedited case?

USCIS Response (R. Pignatelli): At the present time, there are no AOS cases being referred to the LOS Field Office from the CSC. All employment-based cases are being processed in Lincoln, Nebraska. This may account for the delay in receiving these files at the Field Office.

6. For I-485 applicants, in the past, members submitted an Acknowledgment Letter issued by the Employment Development Department (EDD) of the State of California as proof of a priority date for a labor certification application in order to show that they are covered by INA section 245(i). Could you verify if this is still acceptable by the Field Offices?

USCIS Response (R. Lyons): To establish their eligibility under section 245(i), the applicant bears the burden of showing that he/she properly filed an application for labor certification prior to April 30, 2001, and that this application was meritorious in fact and non-frivolous. While an Acknowledgment Letter from the Employment Development Department may establish that an applicant submitted an application for labor certification prior to April 30, 2001, it is not conclusive evidence that this application was properly filed, meritorious in fact, and non-frivolous. Our adjudication officers handle these situations on a case by case basis, and have the authority to request additional evidence to make a determination about an applicant's eligibility under section 245(i).

7. AILA members have encountered CIS adjudication officers at San Bernardino who appear not to accept the difference between sentence reduction or modification (i.e. from felony to misdemeanor) vs. expungement, even though there are case laws on point recognizing sentence reductions as valid for immigration purposes since 1999. For example, La Farga v. INS, 170 F.3d 1213(9th Cir. 1999) and as recent as 2005 in Matter of Cota - Vargas, 23 I&N Dec. 849 (BIA 2005).

Is this a training issue? This is a concern, as many applicants living in the S.B. area are not represented when appearing for their I-485 interview.

USCIS Response (I. Martin): There is only one known case and it was dealt with appropriately. This topic will be covered at our next training session. If there are other examples, feel free to contact SAO by fax (909) 386-3394.

8. Erroneous Denials of Adjustments of Status at San Bernardino Sub-Office are sent directing applicants to file I-601 Waivers with Chicago by a certain date. Applicants are following those instructions. When the filing date passes, the Sub-Office denies the adjustment of status applications indicating no waiver was filed at their office. Despite filing receipts received by the Chicago Office, the San Bernardino Office is denying these cases erroneously. This has been a continuing problem for over 2 years. The District Office promised to correct the problem in the past, yet denials are still being handed out. The applicant should not have to pay \$585 to reopen the case, when it is clearly a Service error, nor should their attorney use their resources to try to correct these repeated errors. Will the Service revisit this issue and correct it? Will the Service reopen these cases without a filing of a motion to reopen? What can be done to eliminate these problems? Who is the contact person for these cases?

USCIS Response (I. Martin): This has not happened in over 12 months, if not longer. There were issues with not being able to verify the filing of the I-601 in ICMS if it was filed too close to the deadline. The San Bernardino Field Office began asking that the I-601 be sent to them to ensure that they are aware the application was filed. There have been no more such instances. Again, any specifics need to be brought to the attention of an SAO.

NATURALIZATION

9. Expedited Naturalization (INA Sec. 319(b)): For applicants who need to be fingerprinted but are overseas, what is the protocol for getting the fingerprints done and sent back to the U.S.? Specifically, please explain who arranges overseas fingerprinting. Does the L.A. district office generate a notice giving instructions on where to get the fingerprints done overseas and where to send them in the U.S.? If not, is it up to the applicant to go to a consulate overseas to have them done, then send them back to the L.A. district office if the Natz file is in L.A.? If it is up to the applicant to send in fingerprints from overseas, should they be sent to the attention of Mr. Jordan Rund at Room 6024? If the U.S. consulate needs an instruction document from the L.A. district office, can we get it from Mr. Rund?

USCIS Response (W. Prater): Once an N-400 application filed under Sec. 319(b) has been received at the Service Center, the Service Center will send the applicant a notice with two FD-258 fingerprint cards. The notice will direct them to any U.S. Embassy, Consulate or military

installation to have their fingerprints taken, and to return their completed fingerprint cards to the Service Center.

Once the fingerprint cards are received by the Service Center, they will be scanned and submitted to the FBI electronically. If the first set is rejected as unclassifiable, the Service Center will scan the second set and submit them to the FBI.

In cases where the file has already been released to the Los Angeles Field Office, Mr. Rund in Room 6024 will send the same notice with the two FD-258 fingerprint cards to the applicant overseas, with instructions to return the completed fingerprint cards to his attention. Once received, they will be sent to the Service Center for scanning and submission to the FBI. Once the Los Angeles Field Office is aware of the expedite request, they will contact the Service Center.

10. What is the procedure for having a pending Natz file moved from the Santa Ana office to the L.A. office?

USCIS Response (J. Rund): Schedule an InfoPass appointment with the office having jurisdiction over the applicant's application. This is only acceptable in cases where the applicant has moved or in limited circumstances for convenience of the applicant. This process is not to be used for cases where attorneys have issues with the manner in which the cases are being handled. Please bring those cases to the attention of Mary Kozlowski so that she can address the issues properly.

MISCELLANEOUS

11. Could you please clarify where attorneys should file "Fee-waived-Service Error" Motions to Reopen on Adjustment of Status Cases? We have experienced difficulties in filing these even when going through INFOPASS. What happens when an INFOPASS is not available within the 30 day period allowed to file the MTR? Please advise of the procedure for Service Error MTRs in San Bernardino and Santa Ana as well.

USCIS Response (D. Armenteros): Service Motions to Reopen are accepted in the following manner:

- Los Angeles Field Office: Either by InfoPass appointment, or by mail to David Douglas Field Office Director.
- San Bernardino Field Office: By mail only -- Attention: Irene Martin, Field Office Director
- Santa Ana: By mail or InfoPass appointment - Attention: Mary Kozlowski, Field Office Director

INFOPASS & IIO INQUIRIES

12. Members have received MTR denials signed by Information Officers. Do IIOs have the training to make determinations on legal arguments such as those contained in a Motion to Reopen?

USCIS Response (D. Armenteros): All HOs are "officers" and they have been trained regarding the proper procedures for adjudicating all Motions to Re-open on denied cases. There is a procedure in place for speaking to a supervisor, if needed.

13. Members report that they have received denials on MTRs filed with the Chicago Lockbox where the same officer who denied the underlying case denies the MTR. Shouldn't another perhaps higher-ranking officer be considering these Motions to Reopen to make sure the denial is appropriate? Please advise how to handle and report such cases.

USCIS Response (S. Alegria): This question was forward to the National Benefits Center, and here is their response:

The regulations do not preclude the officer who issued the denial from also handling the motion. The current Adjudicators Field Manual states that this is to be the normal practice.

10.17 Motions to Reopen or Reconsider.

(a) General. [Revised 04-20-2006 to include Notes 1-3] A motion to reopen or a motion to reconsider a decision may be filed provided the request meets the requirements of 8 CFR 103.5. Motions to the BLA must meet the requirements of 8 CFR 3.2. Ordinarily a motion is adjudicated by the same officer who made the original decision. In all cases, the motion must be considered by the same office (district, service center, immigration court, AAO, or BLA) which most recently decided the case. A motion may be filed by the applicant or petitioner or by USCIS.

Although the NBC does follow the AFM and allows the same officer who denied a case to also work the MTR, it is the practice of the NBC to have all denial decisions reviewed by a supervisor. All MTRs that result in a denial, will have supervisory concurrence.

14. What are the parameters of and restrictions on information that the InfoPass officers are allowed to give out, such as, location of a file, etc.? And, if only minimal information is provided, why have InfoPass?

USCIS Response (D. Armenteros): It is a District Policy to refrain from disclosing file locations or divulge specific information regarding the processing of benefit applications. Officers are trained to recognize if the file is in the wrong location, and call it back, if appropriate. InfoPass appointments serve many useful purposes such as ensuring that the case is in active process, to update information on the case, or to learn whether supplemental evidence has been received.

15. When calling 1-800 for information with respect to status of cases filed back in June and July 07 without any receipt notice received from service centers, members are told by HOs in first and second tiers that service centers are not issuing any more receipt notices due to overwhelming filing backlog of July 2007. Please state if this is accurate.

USCIS Response (Nancy Alby of the Western Telephone Center): This is not accurate. However, specific information will be available on the USCIS website in the next few days. It is important to mention that in general, receipts this fiscal year have been higher than projections. On top of already high receipts, there was a dramatic additional increase in July. There were two principal reasons for this added surge. First, the Department of State July Visa Bulletin created an opportunity for hundreds of thousands to apply for permanent residence. While we continue to receipt the work we already had received, it is estimated that an additional 320,000 adjustment

applications came in due to the additional available Visa Numbers. USCIS also received a significant volume of concurrently filed petitions to sponsor the adjustment applicant as an immigrant worker, and over 400,000 applications for ancillary benefits such as employment and travel authorization based on the filing of the adjustment application, for a total of almost 800,000 submitted applications.

All of USCIS is working to ensure that all applications and petitions are processed as quickly and efficiently as possible. Great care is being taken to ensure that cases are processed based on the date the application or petition was postmarked to ensure proper processing. Certain work is being prioritized to meet certain legal obligations. A critical target is to ensure that all applications to adjust status (I-485) are receipted to allow processing of any EAD application within 90 days of filing. USCIS anticipates resolving the receipting delay for adjustment-of-status applications in October 2007. It is expected that all associated EAD applications within the required timeframe will be handled.

The second reason for the large surge in applications and petitions was to beat the July 30th increase in filing fees. This surge crossed many form types and benefits. But none seemed to increase more than naturalization, where customer efforts to file before fee increases came on top of an already high demand. It is projected that USCIS received over 500,000 applications for Naturalization in July and August, compared to an average of about 70,000 per month. It will similarly take us some time to receipt all of these applications.

It will take several months, if not more, to fully analyze and realize the operational impact of this influx of work on our goals. You are encouraged to watch the USCIS website where updates regarding this issue will be posted in the near future.

16. For InfoPass inquiries pertaining to dependents' cases, is it the L.A. district office's policy that a separate appointment must be set under each dependent's "A" number? No This is what we have been told several times. Where a whole family has cases pending with USCIS, we have been told that we have to allot a separate InfoPass slot for each of the children, which in some cases (if a principal has a very large family of 10 children, for example) would mean multiple trips to downtown L.A. just to find out what is going on with the dependents' cases or book a long timeline with InfoPass for our inquiry. Please clarify, and kindly note that a policy requiring separate appointments to find out what is going on with a single family would be unworkable.

USCIS Response (D. Armenteros): The policy is one appointment per family regardless of the family's size. If this procedure is not being followed, please let a supervisor or manager know.

UPDATE ON STAFFING AND POLICY CHANGES AND CURRENT PROCESSING TIMES:

- a) Have there been any staffing changes? Effective October 1, 2007 the following staff changes will take place:

USCIS Response (J. Arellano):

Room 2050 will be used for BASIC training (Discussed at AILA on August 23, 2007).

Martha Nguyen -- Acting Chief of Staff (Room 6570)

Sany Alegria -- Citizenship (Room 6024);

Roland Lyons -- Naturalization, N-600s and N-565; Room 6001

Robin Pignatelli -- Adjustment of Status (Room 8024)

Wade Prater – Adjustment of Status (Room 8509)
Dianne Armenteros – Director of Public Services (Room 6060)
Floris James – Acting Information Services Manager (Room 6832)

- b) Have there been any policy changes? "Stand Alone" I-212s were relocated from Room 2050 to the Adjustment of Status Units, in Room 8024, 8509, and 8559.
- c) For adjustment of status applications for interviews at the Los Angeles District Office:
Processing times are at six months, but are likely to increase as a result of the increased number of filings in July 2007. We are currently interviewing I-485s and N-400s applications filed May 2007.

1) What are the current processing times for:

- d) Adjustment of status applications pending in Santa Ana:
Processing times are at six months, but are likely to increase as a result of the increased number of filings in July 2007. We are currently interviewing I-485s and N-400s applications filed May 2007.

1) What are the current processing times for:

I-130 – All I-130s received have been reviewed and are in some state of decision.

- e) For adjustment of status applications pending in San Bernardino:

1) What are the current processing times for:

I-485 - May 1, 2007

I-130 – All I-130s received have been reviewed and are in some state of decision (awaiting mail, awaiting decision).

I-140 (transferred cases) --

2) Naturalization applicants in San Bernardino? February 8, 2007.

1) What is the current processing time between the date of filing and the preliminary interview?

Processing times are at six months, but are likely to increase as a result of the increased number of filings in July 2007.

2) What is the current processing time between the date of passing the preliminary interview and the Naturalization ceremony? 30 to 60 days. Is same-day scheduling of approved N 400 cases still happening and will it continue?
Yes.

For LIFE cases:

- 1) How many interviews have occurred? 13,890
2) Second interviews? 1,816

- 3) How many have been approved? 7,248
- 4) How much notice is being given? 4 Weeks

Total Receipts? 12,556

How many have been denied? 4,032

Currently interviewing? Preliminary Interviews & requests for reschedule for Unable to Understand English (UUE).

Scheduling Date? October 16, 2007

For LEGALIZATION cases / 1-687's - CSS / Newman (Both Floors)

- 1) How many interviews have occurred? 7,192
- 2) Second interviews? 551
- 3) How many have been approved? 484
- 4) How much notice is being given? 30 Days (Prelim)

How many have been denied? 8,121

Scheduling Date? October 22, 2007

Thank you.

Faith Nouri

AILA Treasurer

Southern CA Chapter



These minutes are approved: _____

Jane E. Arellano District Director, District 23