

February 15, 2008

Ms. Jane Arellano, District Director
Los Angeles Field Office
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 January 31, 2008 meeting:

Carry-Over Question

I-90

1. Whether police report is required in place of sentencing or conviction records for I-90 replacements or renewals.

USCIS Response: Aytes policy memo dated Jan 4, 2008, states that "if the I-90 application contains a RAP sheet that indicates that the applicant may have been engaged in a criminal offense, the adjudicators should request the arrest records and/or original court disposition by means of issuing a Request for Evidence, if such documentation has not been provided by the alien previously".

We are currently waiting to hear from HQ Operations regarding whether the current policy will be modified.

Carry over to next month.

ADJUSTMENT OF STATUS, I-751 & I-130 UNIT

2. Service centers have advised that they will be conducting sweeps to locate files that can be reviewed for adjudication under the changes in background check procedures announced by USCIS on February 4, 2008.

Is there a plan for District 23 to identify and process such files? If so, please advise on the following:

- a. When such plans are expected to be implemented. **See our answer to No. 3**
- b. Whether naturalization applications are included in such a plan, and if not, why.

There is no change in the requirement that FBI name check, FBI fingerprint and Interagency Border Inspection Services (IBIS) check results be obtained and resolved prior to the adjudication of an application for naturalization (N-400).

- c. Whether it would help the District No. 23 if we brought up such cases to their attention.

Please refrain from submitting inquiries on these cases until after March 15, 2008. Please bring EB-3 cases that become current in March 2008 that are pending in District No. 23 to our attention by INFOpass.

- d. When we can expect seeing such adjudications.

These cases were maintained in a separate location on our shelving and are being worked since the memo was issued on February 4, 2008.

If you know that you have a case where it has been 15 months since the fingerprints have been taken, please send a list by fax to Dianne Armenteros at 213-830-5147.

3. According to the recent February 4, 2008, Aytes memo, questions regarding AOS cases with FBI checks pending longer than 180 days "should be directed through appropriate supervisory and operational channels" at the District Office level.

What are the District No. 23's internal plans to identify cases that are ripe for approval under the new memo?

We understand that the timeline to start inquiring is March 15, 2008, per recent District No. 23 advisement through AILA liaison. What is the expected time horizon for identifying and approving these cases?

If not immediately, at what point would the District No. 23 encourage case-specific inquiries from applicants or counsel?

How will the new policy to speed the processing of security checks be applied to adjustment cases that have been on hold for security clearances for over 1 year, over 2 years or more?

USCIS is committed to protecting national security while, at the same time, providing immigration services to our customers fairly. To enhance national

security and to ensure the integrity of the immigration process, USCIS conducts background checks on all applicants, petitioners, and beneficiaries seeking immigration benefits. Previously, USCIS mandated the completion of FBI name checks on certain form types before the approval of the application. Recently, the agency modified that guidance, allowing for certain form types to be approved if the case is otherwise approvable and the FBI has not provided any actionable, derogatory or adverse information in response to the name check within 180 days. This new policy does not speed the procedure but allows for cases that have been pending for one, two or more years to be adjudicated and reviewed on a post-audit basis. Cases will stay at District 23 field offices for 5 years or until the name check comes back, at which point they would review to see if information rises to the level to start recission proceedings.

USCIS Response (SAA): The Santa Ana Field Office began working on cases affected by the Feb. 4, 2008 memo immediately. They are reviewing these cases, updating other background clearance requirements, and hope to complete all of these cases by 3/31/08 or earlier. After March 15, attorneys may fax inquiries about specific cases to 714-972-6695.

USCIS Response (LOS): The Los Angeles Field Office had segregated cases that were pending for name check only and began processing them on the day the memo was issued. March 15 is the first date when case-specific inquiries may be made to the field office by INFOpass or fax Dianne Armenteros at 213-830-5147. We intend to complete the adjudication of the bulk of affected cases by then. It is very likely that new fingerprints will be required in many instances; clients should be urged to appear on the day they are scheduled for reprinting or as soon as possible after that date to avoid delays. Please note that cases will be delayed if a visa number is unavailable.

USCIS Response (SBD): All cases have been identified and separated; cases that have expired fingerprints are being sent appointment notices for the Application Support Center. All others have been adjudicated. Inquiries may be submitted after March 15, 2008, if no notices from USCIS have been received. Submit an inquiry via fax (909) 386-3394, Attention SAO Anita Reyes.

4. Is it acceptable for an interviewing officer to tender a handwritten letter saying that applicant's adjustment has been approved, without there being any code at the top of the handwritten letter? If no welcome letter is received, what should we do to follow up?

USCIS Response (SAA): If no formal notice of approval is issued, request one from the officer or a supervisor.

USCIS Response (LOS): When an application for Adjustment of Status is approved, the applicant is given a standard, typed approval letter at the conclusion of the interview. The Adjudications Officer handwrites the name of the applicant, date, file number, class of admission, date of entry, country of birth and date of birth on the approval letter, and stamps the Field Office Director's signature in red ink on the letter. If the Adjudications Officer does not issue a standard approval letter, or issues a handwritten letter or a letter which does not include the data mentioned above, please request to speak to a supervisor.

USCIS Response (SBD): If your client is not issued a standard approval letter, submit an inquiry via fax to (909) 386-3394, attention SAO Anita Reyes.

N-400

5. When an applicant in possession of a valid US passport applies for a certificate of citizenship but has undue difficulty in obtaining an original birth certificate from their country of origin, will CIS deny the application? Could USCIS consider an affidavit in lieu of birth certificate? If yes, are such affidavits necessary since the US passport is conclusive proof that the applicant is a US citizen and therefore should their N-600 be approved on that basis alone?

USCIS Response (SAA) - We would refer to the Foreign Affairs Manual (FAM) regarding availability of foreign documents in determining whether to accept an affidavit in lieu of a certificate. Also, not everyone issued a U.S. Passport is a U.S. Citizen (Western Samoa). We normally ask applicants to request copies of the documents that were submitted to Department of State when applying for the U.S. passport. We see cases where the applicant cannot qualify; such as, their parents are divorced and the parent who naturalized did not have custody, or the child was adopted and trying to use the birth parents information to apply for a passport. We follow the FAM guidelines, and we also order the parents' files to determine what declarations are housed in the file regarding availability of documents at the time of entry to the United States.

USCIS Response (LOS) - The birth certificate is necessary to establish the relationship between the N-600 applicant and the parent(s) through which the applicant is claiming to have acquired or derived citizenship. The U.S. passport is evidence that the applicant proved a claim to U.S. citizenship status to the satisfaction of the U.S. State Department; however, it does not establish how and when the applicant became a U.S. citizen. The adjudicating USCIS officer must determine how the applicant became a U.S. citizen, whether the applicant acquired U.S. citizenship at birth through one or both parents, or if the applicant derived citizenship later at the time that one or both parents were naturalized.

If the applicant states that he is unable to obtain a birth certificate, then the adjudications officer will consult the Foreign Affairs Manual (FAM). The FAM lists the types of documents that are available for each country, and the authorities within that country that issued such documents. If the State Department has determined that no birth certificates are available from the applicant's country of birth, then USCIS will consider the secondary evidence. Section 103.2(b)(2) governs the submission of secondary evidence and affidavits in general.

When the applicant is unable to obtain a birth certificate and the applicant and the claimed parents immigrated together and their alien registration numbers are sequential, the officer may accept affidavits regarding the child's birth. Other secondary evidence that supports the affidavits is helpful, such as baptismal certificates and parent's foreign passports that list and/or picture the minor children.

USCIS Response (SBD): The San Bernardino Field Office is not yet adjudicating N-600 applications.

6. An AILA attorney reported that after N400 interview was successfully conducted, the officer indicated that since the applicant was a sex registrant, he could not approve the case without writing a mandatory memo and since it would take time to write the memo, he could not give an approval and would have to give a general note stating that this case is pending further review. Is this a normal procedure? How long does it take to get this memo completed? Why do applicants who showed eligibility have to further be delayed in obtaining their citizenship? What steps should be taken to resolve such tactical delays?

USCIS Response (LOS): An applicant who is convicted of a crime that renders him or her ineligible for naturalization is subject to removal. An NTA will be issued and the N-400 application will be denied. In the instance where the applicant is eligible for naturalization, but for the conviction, USCIS will review the file and determine if the applicant should be afforded the favorable exercise of prosecutorial discretion. The file is documented with a memo by the adjudicator recommending prosecutorial discretion. Both the Supervisory Adjudications Officer and the Section Manager must concur with that recommendation. This process generally takes up to 90 days.

USCIS Response (SAA): We carefully evaluate cases involving applicants required to register as sex offenders. It is entirely appropriate for these cases to be delayed to allow for careful review, and it is beneficial to the applicant for us to give careful consideration to all the factors affecting an evaluation of good moral character.

USCIS Response (SBD): The specifics of this case would have to be reviewed in order to provide an appropriate response. If the case was handled in San Bernardino, please submit an inquiry via fax (909) 386-3394, Attention SAO Maratai Muldrow.

MISCELLANEOUS

7. What is the procedure for obtaining EADs that have been pending for over 90 days? In the past we were informed that we would need to make an infopass and the IIO would email a request for immediate card production to the production facility. Many District 23 officers are refusing to do this.

Please clarify the procedure and what to do at this point.

Since the locally produced cards were eliminated (see the memo entitled, Elimination of Form I-688B, Employment Authorization Card Michael Aytes, dated August 18, 2006), USCIS has been required to adjudicate pending Forms I-765 within 90 days from the date of receipt, 8CFR 274a13(d). Failure to complete the adjudication within this time frame requires USCIS to grant an interim employment authorization document for a period not to exceed 240 days. Please make an InfoPass appointment. The IIO will verify that the application remains pending, determine if an RFE (Request for Evidence) has been issued, thus tolling the 90-day adjudicative requirement, and verify that the biometrics have been captured. If all the elements have been met, the IIO will contact the appropriate service center and USCIS will issue an acknowledgment letter.

If this procedure is not followed at your InfoPass appointment, please ask to speak to a supervisor. You may also report this to the Chapter Liaison.

8. Instruction for the I-290B requires filing with the office where the unfavorable decision was rendered for a motion to reopen and/or motion to reconsider. Members report quicker success with Infopass.

USCIS Response: Motions to Reopen or Reconsider are filed with the \$585 fee with the Lockbox in Chicago. Although the procedures for filing a Motion to Reopen or Reconsider have not changed, the Form I-290B and instructions are undergoing revision at this time.

Requests for Service Motions to Reopen should be filed with the office that made the unfavorable decision through an INFOpass appointment.

What is your recommendation?

Follow the instructions above.

9. What is the policy to follow up with MTR's that have been filed but have not been adjudicated for over 180 days?

Inquiries concerning MTRs that have been filed but have not been adjudicated for more than 180 days should be brought to the attention of the appropriate Field Office by scheduling an InfoPass appointment. On a case-by-case basis, referrals of this type will be made to an appropriate duty officer.

10. What is the status of cases that fall under Acosta v. Gonzales? Are they still being held in abeyance? When might the District No. 23 be receiving instructions as to how to proceed with these cases? This is follow-up question from our Sep 27, 2007 meeting.

These cases are still pending final guidance from Headquarters USCIS.

UPDATE ON STAFFING AND POLICY CHANGES AND CURRENT PROCESSING TIMES

- a) Have there been any staffing changes?

**Jordan Rund is now Associate Regional counsel.
Aaron Doty will be Acting Supervisor in the Naturalization Continued Unit and can be reached at 213-830-5205.
Jim Lloyd was selected as Special Assistant to Dave Douglas.
Surge positions available to address naturalization backlogs.
Project manager to oversee natz ceremonies.**

- b) Have there been any policy changes?

Asylum officers will be trained to conduct naturalization interviews and appointments will be scheduled in Anaheim on Saturdays and Sundays beginning March 15.

NOTE: The asylum office will NOT accept inquiries, walk-ins or follow-ups regarding Los Angeles Field Office naturalization cases. If you need to request a reschedule or an appointment or inquire on a continued case - do so at the L.A. Field Office.

East LA will also be conducting naturalization interviews during regular and overtime hours.

- c) For Adjustment of Status applications for interviews at the Los Angeles District Office:

1) What are the current processing times? **October 2007**

- d) For Adjustment of Status applications pending in Santa Ana:
USCIS Response (SAA): Processing times for AOS : we are interviewing cases from a range of filing dates, some as late as July 2007.
Natz: we are interviewing cases filed in June 07.

1) What are the current processing times for the following?

I-130 N/A

- e) For Adjustment of Status applications pending in San Bernardino:
July 30, 2007

1) What are the current processing times for the following?

I-130 - All are stand alone, recently filed IJ cases are reviewed upon receipt of 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? ? **The current processing time is April 6, 2007**

2) What is the current processing time between the date of passing the preliminary interview and the Naturalization ceremony? **60-90 days** Is same-day scheduling of approved N400 cases still happening and will it continue? **Yes, as needed, we do provide same-day notices scheduling applicants for oath ceremonies by the Los Angeles Field Office only.**

For LIFE cases:

- 1) How many interviews have occurred? **13,962**
- 2) Second interviews? **1,818**
- 3) How many have been approved? **7,303**
- 4) How much notice is being given? **3 Weeks**

Total Receipts? **12,556**
How many have been denied? **4,137**
Currently interviewing? **Preliminary interviews, requests for a
reschedule and UUE's.**
Scheduling Date? **March 13, 2008**

For LEGALIZATION cases:

- 1) How many interviews have occurred? **7,206**
- 2) Second interviews? **851**
- 3) How many have been approved? **504**
- 4) How much notice is being given? **1 month**

How many have been denied? **8,236**
Scheduling Date? **February 20, 2008**

Thank you for your assistance.

Faith Nouri
AILA Treasurer
Southern CA Chapter

Minutes approved by:



Jane E. Arellano
District Director
District 23