

April 10, 2009

Ms. Jane Arellano, District Director
District No. 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 April 23, 2009 USCIS District 23 District Director Meeting.

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

1. Members report receiving interviews for multiple adjustment of status clients for the same date and time. To avoid the need to request reschedules and unnecessarily delay processing, is it possible for the scheduling unit to be alerted of this issue and avoid scheduling overlapping appointments for the same attorney?

USCIS Response - The batch scheduler in CLAIMS 4 does not allow us this level of precision in scheduling. The cases are scheduled electronically and the field office does not have any way to determine in advance which cases have the same attorney for cases filed in each field office. However, where AILA members encounter schedule conflicts, these interview appointments can be moved by a supervisor or section manager to the extent necessary to accommodate multiple appearances. AILA members should bring this to the attention of the appropriate supervisor by dropping off the request for accommodation with the unit where the interview was scheduled.

2. Members report instances where fingerprints have expired prior to a scheduled AOS interview, which results in delay to obtain updated checks, resulting in less efficient processing. This often occurs in cases that have been administratively closed by the court. Could the District identify those cases at the time of scheduling and send ASC appointments with the interview notices to avoid delays?

USCIS Response - We may not be able to identify cases that require fingerprinting as we are not notified in advance of the termination of proceedings. USCIS makes every effort to schedule customers appropriately for either biometrics capture or a new interview. What AILA members can and should do is make an INFOPASS appointment to request a

fingerprinting appointment when they become aware that a pending case is being referred back to USCIS from the court.

3. Members report that ISO's are requesting excessive corroboration of physical presence for 245(i) beneficiaries and erroneously requesting proof of physical presence for derivatives. Is it a District policy to require proof from multiple sources, assuming the proffered information is reliable such as paystubs, a detailed bank statement or a Form W-2? Is the District requiring proof of physical presence for 245(i) derivatives?

USCIS Reponse - The evidentiary burden upon the alien to demonstrate physical presence is described at 8 CFR 245.10. The three items listed in the question are all legitimate forms of evidence described in regulation. The regulations state at 8 CFR 245.10(n):

“...If no one document establishes the alien’s physical presence on December 21, 2000, he or she may submit several documents establishing his or her physical presence in the United States prior to, and after December 21, 2000.”

District 23 should not be requesting proof of physical presence on the part of derivative beneficiaries. Field Office Management would welcome an opportunity to review specific instances where this evidence has been requested.

4. Are there any guidelines to know what types of interview questions are inappropriate in adjustment of status interviews? (e.g. sexual, religious and other very personal topics as well as the manner of questioning, such as being rude, refusing to rephrase a question to help the alien understand, or not permitting an attorney to talk to their client in their native language) What should we do if we feel that these guidelines are not being followed? Is it possible to request an interview with a different officer? If so, how?

USCIS Response - Immigration Service Officers within District 23 have been instructed to refrain from asking any questions in regard to intimate relations between a petitioner and beneficiary. If an AILA member becomes aware of questions that violate this prohibition, they should ask to speak with a supervisor immediately. This would similarly be true of rude or abusive questioning from the ISO. The supervisor may reassign the interview to a different officer if that is deemed appropriate. Unless an interpreter is present, any communication between officer, applicant (to include petitioners and beneficiaries), and attorney should be conducted in a language that all three understand. If an attorney has a need to confer with their client in private, the attorney should ask for an opportunity to do so from the officer.

5. Often at AOS interviews there are related A-files including prior approved I-130 petitions. At the interview, some officers are requiring that the prior I-130 petition needs to be “revoked”

before granting a *different* I-130 petition and I-485 application. Under what section of the law is this required?

USCIS Response - There is no need to revoke a previously approved petition in order to proceed with the instant petition / application. However, there may be instances where the I-130 has been automatically revoked based on circumstances that occurred with the beneficiary. Field Office Management would welcome an opportunity to review specific examples AILA Members may have encountered.

NATURALIZATION

6. Child Citizenship Act - Many pro se applicants are filing N-400 and are finding out at the N-400 interview that they are already US Citizens pursuant to the Child Citizenship Act. They are instructed by the interviewing officer to file an N-600 and the N-400 is not adjudicated. These applicants are discovering they have just spent \$675 for nothing and are facing another charge of \$460 for the filing of an N-600. In these particular cases, can CIS accept the N-400 as a properly filed N-600 to avoid the payment of excessive fees? Can the interviewing officer instruct the applicant to fill out an N-600 to replace the N-400 without further charge? Can another process be created to avoid loss of fees when the applicant was not aware of the legal ramifications of the Child Citizenship Act? Can CIS engage in an informational campaign effort to educate the community of this particular situation? If not, can the CIS refund the N-400 fees when no adjudication will take place?

USCIS Response - In an instruction issued on February 5, 2009, USCIS Field Operations stated to the field that fees filed in conjunction with an N-400 could not be utilized for the purpose of later filing an N-600. USCIS has a current process for fee waiver requests that must be followed to ensure fairness in customer service. The instruction states that applicants who inappropriately file Form N-400 because they did not verify their citizenship status before filing Form N-400 should not be exempt or automatically waived from providing the required fees to process Form N-600, unless an applicant's properly-filed request for fee waiver is granted.

The question above states that "applicants are discovering they have just spent \$675 for nothing." This is not accurate. The N-400 application was filed with the appropriate fees, and a decision was rendered.

USCIS will develop an outreach program in order to educate the community on this particular issue.

7. What is the current procedure to reschedule a naturalization ceremony if the applicant was unable to attend the one scheduled, and the request is being made after the scheduled oath ceremony has been completed?

USCIS Response: If an applicant is unable to attend a ceremony, there are several options available:

The applicant may send a letter to USCIS and request to be re-scheduled for a future ceremony, this letter should be sent to: USCIS District 23, 300 North Los Angeles Street, Room 6001, Los Angeles, CA 90012, Attn: Citizenship Room 6001.

- 1. An applicant may send a fax to (213) 830-5165, Attn: Citizenship Room 6001, requesting to be rescheduled for a future ceremony.**
- 2. Or an applicant may make an INFOPASS appointment at 300 North Los Angeles, for Room 1001 where they should advise the Immigration Officer that they cannot attend and need to be rescheduled for a future ceremony. The applicant will likely be referred to room 6001 for further assistance.**

All applicants, even if they do not notify the office will automatically be rescheduled once if they are a "no show" for a naturalization ceremony. Therefore, although notification in advance is preferred, it is not required.

MISCELLANEOUS

8. When an individual in H, L, E, or other employment based nonimmigrant status is laid off, they need some time to wrap up their affairs and take steps to leave the U.S. Technically, there is no grace period for people in this situation. Other districts are accepting requests for "Satisfactory Departure" with proof of intended departure (e.g., airline ticket out) and granting 30 days by designating on the I-94 card "Satisfactory Departure granted until [date]." Will District 23 similarly entertain such requests? Is INFOPASS the appropriate method to request this?

USCIS Response – District 23 does not presently issue any documentation acknowledging satisfactory departure as described by this question. An alien who no longer has legal standing to remain in the country through eligibility of an employment-based non-immigrant visa should depart the United States.

9. What is the District policy regarding service of Notices to Appear (NTAs) and verification of counsel and of the applicant's current address? Members report not receiving NTAs after the denial of adjustment of status, despite having already submitted a form G-28. Additionally, despite changes of address filed through an AR-11, the NTAs are being sent to incorrect addresses of the applicants, ultimately leading to *in absentia* Orders of removal. There are also instances where the District is issuing NTAs *prior* to the scheduled interviews, even though the adjustment would cure the ground of inadmissibility/deportability. Under such circumstances, motions to reopen due to service error are being rejected based upon a lack of jurisdiction.

USCIS Response - District 23 ensures that officers issuing NTAs conduct a thorough review of the file and check all systems prior to issuing an NTA. Field Office staff should be making every effort to ensure that Notices to Appear are being sent to the correct address of a respondent and their legal counsel. The instances described in the latter part

of the question most likely correspond to applications that are denied by the National Benefits Center without interview. The NBC will forward those files to the local office for issuance of an NTA. Requests for Service Motion are properly filed with the NBC, if that was the originating office of the denial.

Additional instruction will be provided to the staff in that regard.

UPDATE ON STAFFING AND POLICY CHANGES AND CURRENT PROCESSING TIMES

- a) Have there been any staffing changes?
- b) Have there been any policy changes?
- c) For Adjustment of Status applications:
 - 1) What are the current processing times between the date of I-130/Adjustment of Status filing until interview date at the following Field Offices:
 - Los Angeles – 4 – 6 months
 - Santa Ana – 4 months
 - San Bernardino – 7 months
 - 2) How much notice is being given prior to the interview?
 - Los Angeles 30 – 45 days
 - Santa Ana – 30 days
 - San Bernardino 30 – 45 days
 - 3) What are the current wait times between the date of I-140 Adjustment of Status transfer (sent from Service Center) until interview date at the following Field Offices:
 - Los Angeles 4 – 6 months
 - Santa Ana – 30 days
 - San Bernardino 30 days
- d) For Naturalization applications:
 - 1) What are the current processing times between the date of filing the N-400 until the preliminary interview at the following Field Offices?
 - Los Angeles 90 days
 - Santa Ana – 4 months
 - San Bernardino – 60 days

2) What are the current processing times between the date of passing the preliminary interview and the oath ceremony at the following Field Offices?

Los Angeles 30 - 60 days
Santa Ana - 30 - 60 days
San Bernardino 60 - 90 days

3) What are the current processing times for an N-336 at the following Field Offices?

Los Angeles 60 - 90 days
Santa Ana - 30 - 60 days
San Bernardino 90 days

Thank you for your assistance.

Joseph S. Porta
Secretary
AILA Southern California Chapter

Minutes approved by:

 05/11/09

Jane E. Arellano
District Director

Date