

June 2, 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 May 21, 2009 USCIS District 23 District Director Meeting.

1. **Carry-over Question:**

The March 26, 2009 Meeting Minutes contained the following item that the District was going to inquire about further:

Question: According to the minutes of the November 6, 2008 NBC/AILA Liaison Committee Meeting, immediate relative adjustment of status applicants who initially entered the U.S. EWI but who thereafter became Special Agricultural Worker (SAW) applicants and traveled legally during the pendency of their ultimately denied SAW applications may present "as evidence of lawful admission" their SAW EAD's ("Employment authorization Form I-688A in the form of a plastic picture ID with the notation '210' on the bottom center portion"). Does the District follow this policy as well?

USCIS Response: *After consultation with NBC counsel, review of the governing regulations, and its legislative history, we find that the Form I-688A does not constitute proof of a lawful admission for AOS purposes. The NBC is revisiting the issue. USCIS in Los Angeles will require proof of lawful admission or parole, as required by INA Section 245(a). The submission of the Form I-688A, in and of itself, does not constitute such proof.*

Have there been any updates?

USCIS Response: The National Benefits Center stated that they will continue to accept the documentation (SAW 210 EAD) and send the cases on to the field offices as long as everything else in the file is okay. They are awaiting clarification from HQ counsel. The NBC will issue an update to AILA once this clarification is received since their previous response to that question will probably change.

2. Follow-up to Question 5 from the January 22, 2009 Agenda:

The January 22, 2009 agenda contained the following question and answer:

Question: Naturalization & Removal Proceedings: 8 C.F.R. § 1239.2(f) permits an immigration judge to "terminate removal proceedings to permit the alien to proceed to a final hearing on a pending application or petition for naturalization when the alien has established prima facie eligibility for naturalization and the matter involves exceptionally appealing or humanitarian factors." Is there a contact person in the Naturalization Unit that handles these types of requests? Would the District consider an applicant prima facie eligible despite deportability as a matter of prosecutorial discretion? For purposes of the question, please assume that the applicant is likely to be granted relief from removal.

USCIS Response: If the proceedings are terminated, USCIS will consider the case. Although the issue of removability would have been overcome, the facts of the case, such as GMC and residency, for example, would still need to be determined. Field offices exercise prosecutorial discretion on individual cases taking the specific facts into account.

In the Los Angeles Field Office, the point of contact is Supervisory AO Paul Cardillo. You may fax your request to him at 213-830-5210. In the San Bernardino Field Office, you may fax your request to any citizenship supervisor at 909-386-3394 or Section Manager Joel Miramontes via fax at 909-3863314.

What procedure is followed to request a prima facie eligibility determination for naturalization by USCIS allowing the IJ to be able to terminate removal proceedings under 8 C.F.R. § 1239.2(f)? Please note that the IJ cannot terminate until USCIS has made a prima facie eligibility determination, pursuant to Matter of Acosta Hidalgo, 24 I&N Dec 103, 107 (BIA 2007) (holding that adjudication by the Department of Homeland Security on the merits of an

alien's naturalization application while removal proceedings are pending is not an affirmative communication of the alien's prima facie eligibility for naturalization that would permit termination of proceedings under 8 C.F.R. § 1239.2(f).

USCIS Response: USCIS will generally not issue eligibility letters, especially in cases where USCIS placed the person in removal proceedings. We have however, issued letters when CBP placed a returning LPR in proceedings and they already had an N-400 pending before us that we were considering exercising prosecutorial discretion. We would make that determination on a case-by-case basis.

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

3. Where an alien, who is otherwise eligible for adjustment (under section 245 or 245(i)), presently has their proceedings administratively closed with the Board of Immigration Appeals (BIA) because of TPS protection, can an adjustment be filed directly with the USCIS in light of the administrative closure at the BIA? Does USCIS have jurisdiction? Is the result the same if the alien last entered on parole or is otherwise an arriving alien?

USCIS Response: Administrative closure with the BIA does not give USCIS jurisdiction for any applicant who is not an arriving alien. In such cases, EOIR would have jurisdiction and USCIS cannot adjudicate the application. One exception to this rule is that the IJ will have jurisdiction over applicants who filed a proper AOS application and departed and returned pursuant to a grant of advance parole, were denied admission upon return or denied AOS by CIS, and were placed in proceedings .

4. Members report that I-130 petitions for respondents in removal proceedings are taking an excessive amount of time to process. Often times, this occurs because the file remains with the Office of the Chief Counsel. There are also difficulties obtaining an interview even after an InfoPass appointment is attended. Is there a procedure that can be implemented to retrieve the A-files from litigation during InfoPass appointments without having to independently seek the assistance of the Chief Counsel's office? Could the District please provide updated statistics regarding the processing times for I-130 petitions for beneficiaries in removal proceedings?

USCIS Response: AILA members should make an INFOPASS appointment and specifically request that the Immigration Services Officer request the file containing the pending I-130 from ICE Counsel. These will be retrieved and routed to the appropriate section. Current processing times are approximately two months from the time the file is retrieved from Litigation. The Santa Ana and San Bernardino do not routinely process I-130 petitions for individuals who are in removal proceedings. However, occasionally the

service center may route an I-130 to the field office having jurisdiction over the beneficiary's place of residence.

5. Members report inconsistent adjudication of hardship waivers by the Waiver Unit at Soto Street, as compared to other offices and the Immigration Court. Specifically, it is reported that hardship factors including financial, emotional, psychological, and derivative hardship are given minimal weight and the unit is routinely only granting medical hardship cases. What standard is applied in adjudicating these types of waivers? Does it include a cumulative analysis of all the hardship factors, including hardships to non-qualifying which adversely affect a qualifying relative (e.g., non-qualifying disabled child's effect on hardship to qualifying parent)? What is the current processing time for these types of waivers?

USCIS Response: Officers in East Los Angeles were trained to adjudicate I-601 waivers by Los Angeles Field Office staff. The standard applied to most of these waiver requests was "extreme hardship" as defined by precedent decisions from the Board of Immigration Appeals. Cumulative analysis of the factors listed above were taken into account in the adjudication of these cases.

6. Please provide the District's policy regarding whether a new I-751, as a self-petitioner, is required in the following scenarios. For purposes of the question, please assume that a timely I-751 joint-petition based on a bona fide marriage was filed.

- a) Is a new I-751 as a self petitioner required if after filing and during adjudication the couple separates but no dissolution or annulment proceeding has been filed?

USCIS Response: Not necessarily. If the Conditional Permanent Resident (CPR) and the petitioning spouse appear for the interview, the ISO will determine if the following facts are true:

- The marriage was legal where it took place.
- The marriage has not been terminated.
- The marriage was not entered into for the purpose of procuring permanent resident status; and
- no fee (other than to an attorney for filing assistance) was paid for the filing of the underlying I-130 or I-129F.

b) What if dissolution or annulment proceedings commenced after filing and remain pending at the time of adjudication?

USCIS Response: If the ISO encounters a waiver request on the basis of termination of marriage, but the Conditional Permanent Resident (CPR) is currently legally separated or in a pending divorce or annulment proceedings, the ISO will issue a RFE with a response period of 87 days. In many cases the divorce will take place during the response period to the RFE, which affords the CPR the opportunity to establish eligibility for the waiver by submitting a copy of his or her final divorce decree or annulment.

c) What if dissolution or annulment proceedings have been finalized after filing?

USCIS Response: Submit a copy of the final divorce decree or annulment and a request that he or she would like to have the joint filing petition treated as a waiver petition.

d) If a new I-751 is required in any of the above scenarios, can a new form be filed at the interview? How does one pay the fee?

USCIS Response: The I-751 is properly filed by mail with the California Service Center with the appropriate fee.

MISCELLANEOUS

7. Certain EOIR cases require both biometrics and fingerprints be taken before granting relief. Sometimes the TSC does not send out the necessary appointments. Is it possible to obtain the appointments for both fingerprint and Biometric appointments at the Los Angeles Field Office in the same request? What is the procedure to accomplish this?

USCIS Response: The TSC reported technical difficulties with the automated scheduling of EOIR cases last year. This technical problem was fixed in February, 2009. If you did not receive an appointment, you may either schedule an Infopass appointment or fax your request directly to the TSC at 214 489-4357. Please indicate the applicant's name, A#, address and receipt number or schedule an Infopass appointment. Our staff will be happy to send the fax to the TSC for you. Additionally, it is possible to have both the fingerprint and biometric appointments in the same request with a referral to an ASC, however those referrals will continue to be made on a case-by-case basis.

8. At the April 23, 2009 District Director Meeting it was announced that InfoPass appointments for attorneys have been expanded to provide better customer service. Could the District please provide the specifics about these welcome improvements?

USCIS Response: We announced that the process would be simplified on a trial basis. Attorneys can now schedule one InfoPass appointment for up to six (6) individual cases without regard to the type of inquiry. There is no limit to the number of Infopass appointments an attorney can make each day. Our staff will issue a "J" ticket for most of these inquiries. The same officer will serve that attorney on all six inquiries.

There has been no change in the appointment process for immigration judge grants and inquiries. These cases are given an "I" ticket.

9. What is the District's involvement in the processing of unlawful presence waivers referred by Ciudad Juarez for adjudication? Is there a local procedure/contact person to inquire about these cases or to request an expedite? How many officers will be processing these requests? Will the officers processing the requests be existing asylum officers?

USCIS Response: The newly created branch of the International Operations Division (IO) is called the International Adjudications Support Branch (IASB). Like the Asylum Division, the International Operations Division is a division of the USCIS Refugee, Asylum and International Operations Directorate (RAIO). The IASB is part of the IO Headquarters Office but is co-located in the LA Asylum Office (ZLA). The IASB is not part of ZLA. See the following 5/4/09 USCIS Newsletter providing information about the IASB.

Neither the LA District Office nor the Los Angeles Asylum Office will be involved in the processing of I-601 Waiver applications filed in the US Consulate in Ciudad Juarez, Mexico.

Public inquiries for the IASB cannot be made in person at ZLA's public windows. ZLA will not respond to personal or written inquiries on I-601 waiver applications. See below for information on inquiries.

The IASB staff consists of a Branch Chief, 8 Adjudications Officers, and 2 Support Staff members. Most of the IASB's adjudications officers are former ZLA staff members.

The IASB will provide adjudications support to overseas USCIS offices in select paper-based applications and will maintain officers who can be deployed to the overseas offices as needed. See the USCIS newsletter for more information.

The IASB started operations on 5/4/09. It will be adjudicating some, not all, of the I-601 waivers filed in Ciudad Juarez. Right now we are adjudicating I-601 waivers filed in February 2008; next we will adjudicate March 2008 waivers.

A public announcement will be issued this week regarding procedures for inquiries to the IASB. All inquiries need to identify the name of the I-601 applicant and his or her CJS/CDJ file number (issued to the applicant the day he or she filed the I-601 application). Inquiries can be made in writing as follows:

<u>Postal service:</u>	<u>E-mail to the IASB inquiry box- USCIS InternationalOPs- LA Branch at:</u>
International Operations International Adjudications Support Branch P.O. Box 65006 Anaheim CA 92815-5006	<u>iopsla@fins3.dhs.gov</u>

The IASB will adjudicate I-601 waivers on a first in, first out basis (FIFO). The IASB will consider expedite requests for I-601 waivers filed at CDJ in February, March and July 2008. Expedite processing will be at the discretion of International Operations/ IASB. A serious emergent circumstance needs to exist to warrant expedited consideration. Expedite requests can be made by sending an email message to iopsla@fins3.dhs.gov or by leaving a telephone message at the following telephone line: (714) 808-8132. Messages will be checked daily. In the message the expedite writer or caller needs to provide: his or her name and a telephone number where he or she can be reached, a very brief description of the emergency, and the complete name of the I-601 applicant and the applicant's CDJ/CJS file number.

UPDATE ON STAFFING AND POLICY CHANGES AND CURRENT PROCESSING TIMES

a) Have there been any staffing changes? Nancy Alby is the FOD for Production Management and Ceremony Coordination. She is located in Room 6001. Maureen Rust is the FOD for Customer Service and also oversees the civil surgeon list for D23. She is located in Room 6060. Roland Lyons is the FOD for the San Fernando Office and is located in Room 6512.

b) Have there been any policy changes? No, there are no 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 – 6 months

- 2) How much notice is being given prior to the interview?

Los Angeles 30 – 45 days
Santa Ana 30 – 45 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 90 days
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 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:

 06/03/2009

Jane E. Arellano **Date**
District Director
District 23