

November 23, 2005

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

Dear Directors:

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 December 8, 2005 meeting:

#### **ADJUSTMENT OF STATUS/IMMIGRANT PETITIONS**

1. Carry Over Question: Has the Service decided on how an applicant will be able to prove LPR status after the AOS interview at the LADO, while s/he is waiting for the plastic ARC to arrive in the mail? Please advise what is the exact policy and procedure (for District and sub offices) when EADs and APs are taken at time of interview.

Please also advise concerning the following:

- (a) Can something in writing confirming the grant of permanent residence (understanding it is not for travel or work authorization purposes) be given;
- (b) Alien needs to show proof of authorization to work;
- (c) Alien needs to travel immediately or almost immediately;
- (d) Allocate next day INOPASS appointments for those who do not get the cards within a specified number of days.

**Martha Nguyen: New system. Once case is approved, officer requests an LPR card and will receive within 7-10 days. Only under extreme circumstance will they extend a travel document or allow alien to keep employment authorization. If an LPR card is not received within 10 days, make an infopass appointment and can request a passport stamp. As for a letter of "approval" a draft is still being reviewed at headquarters.**

2. Please advise when and also under what circumstances an applicant can come to the Local Office to ask for an interim EAD when the I 765 has been filed and pending at NBC for over 90 days? This is assuming no RFE has been

issued by NBC. Please explain how (or if) the taking of Biometrics or missing Biometrics change the issuance of these interim EADs.

**Martha Nguyen: If waited over 90 days and if no RFE has been issued, then on a case by case basis will issue an interim EAD via infopass. If EAD approved, but not received, can go to infopass and get interim EAD. The 90 days period begins on filing date. Infopass officers can also schedule biometrics if requested an EAD and not received biometrics.**

3. What forms of identification will be accepted by the ASCs for applicants to complete their biometrics and EAD appointments if they do not have any forms of identification such as passports and/or other personal identification document? Can an expired passport be used?

**Martha Nguyen: An expired driver's license or passport is sufficient to prove identity at an ASC.**

4. 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?

**Martha Nguyen: This question will be carried over to next meeting.**

5. Due to Service error, the NBC issues an EAD with wrong information on the card (such as wrong date of birth or country of birth) can the LA District Office reissue a new EAD with correct information when the EAD card has been returned to the NBC for re-issuance?

- A. Can an Interim EAD be issued if the application for a corrected EAD was pending for more than 90 days or returned to NBC for that long?
- B. What if the defective EAD was issued at another Service Center, for example CSC?

**Martha Nguyen: If an error on EAD it must go back to the Service Center that produced it. The original card must be sent back and a new one with correct information must be requested. Will only consider interim EAD's on a case by case basis under these circumstances.**

6. Some Schedule A I-485 cases were approved at LA District Office in September 2005 under E36 when visa numbers were available for certain countries. These Schedule A nurses should have been using numbers from the 50,000 EX category because EX numbers were available after June 2005. Dependents of cases approved under visa category E36 are unable to follow to join as that category (EB3) is now backlogged to 3/1/2001. The adversely impacted following-to-join dependents who are outside the U.S. are now "stuck" for a long, long time as consuls are refusing to process the derivative beneficiaries on the ground that priority dates are not current. Can we fix this? Can the District Office correct the error sua sponte, or can the applicant file a request for correction? Although the chances of issuing

under EB3 is rather low now because of the retrogression, please remind DAOs that Schedule A nurses should be under EX category.

**Kathleen Rojas: This is a State Department problem, not USCIS. Will discuss with State Department and request guidance. Cards are being issued correctly by USCIS with proper designation, however following to join applicants are having problems abroad because of Department of State. However, will carry over to next meeting after conferring with Department of State.**

7. What are the criteria used by LADO for second interviews when one was already conducted and the officer required no other documentation from the applicant? In one case, applicant went to the interview and was asked "why are you here?" The clerk (not officer) then said: "If you have any documents to submit, just leave it. No interview is needed." Do inquiries dropped off at Room 8323 automatically trigger a second interview?

**Martha Nguyen: No. However, files are being reviewed in Rooms 8323 and 8511 and there is a possibility that they were inadvertently scheduled. The only interviews that will be rescheduled is if applicant asks for rescheduling, no interview conducted before or initial officer is intending to resolve further issues. However, filing an inquiry does not trigger an automatic interview.**

8. What is CIS's position on divorces filed in Guam? Does full faith and credit clause apply? Apparently no residency requirement as long as the divorce is not contested.

**Kathleen Rojas: Case by case basis. If litigated, the USCIS has a General Counsel opinion that indicates that domicile of one party must be established in order to qualify as valid dissolution. Aware that Guam recently amended law requiring domicile.**

## NATURALIZATION

9. Several naturalization applicants have been waiting over one year for one of the various clearances to reach their files. Is there a procedure to follow up to make sure the clearances have been properly submitted? Is a home country clearance required in all cases? When IBIS clearance expires, does the DAO automatically request another one? Should the IBIS be cleared before scheduling the interview?

**Wade Prater: There is no procedure for private bar to follow up. However, IBIS checks are valid for 90 days. If IBIS expires, the officer must have to re-do. FBI checks are taken just once, where ID'd to headquarters. There are no home country clearance regulations. If arrest overseas want or warrant pops up it will lead to an overseas investigation to see if a want or warrant still exists.**

10. What is the procedure to clear cases where there is a "hit"? These cases are more "stuck" than ever.

**Wade Prater: Will address these situations on a case-by-case basis. If taking too long bring to attention to Wade Prater at Citizenship Office.**

## REMOVAL

11. On October 6, 2005, ICE Principal Legal Advisor William J. Howard issued a memorandum entitled "Exercising Prosecutorial Discretion to Dismiss Adjustment Cases", which sets forth the procedures for ICE trial attorney to file motions to dismiss immigration court proceedings where it is determined that it would be appropriate for the USCIS District Office to adjudicate the adjustment of status application that is pending before the Immigration Judge.

However, the memo requires that, prior to termination of proceedings, the alien must first properly file his or her adjustment of status application directly with the Immigration Judge subsequent to paying the required filing fees, either to the USCIS District Office or with the USCIS Texas Service Center (after April 1, 2005). The memo further provides that the ICE trial attorney "should route the administrative file(s) through DRO to CIS for adjudication of [the] adjustment application. Therefore, in such cases, if the court proceedings are terminated and where the original I 485 is in the ICE file, could the District Office work out a procedure for directly accepting the original or duplicate I-485 form ICE without requiring the application to be re-submitted to the Chicago lockbox with new filing fees? Also, in such cases, could any pending I-130 be pulled from the Room 2050 backlog to be joined with the I-485 for one time interview and adjudication?

**Kathleen Rojas: ICE indicated that before terminating proceedings, TA's will be requesting original application with fee stamp back from Immigration Court. However, John Salter indicated that no guarantee that Immigration Judge's will give back to ICE. If so, if you have a receipt or duplicate copy of fee'd in application that should be sufficient for adjudicating at the District upon termination.**

**Martha Nguyen: If any problems, the point of contact will be Jim DeBates. The I-130 cases will be pulled from I-130 Unit and placed in adjustment adjudication.**

12. *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?

**Kathleen Rojas: Will carry over to next meeting.**

## MISCELLANEOUS

13. (Follow up question from February 2005.) We have previously raised the content of decisions regarding I-601 "extreme hardship" waivers. Is the District relying on case law from the 9th Circuit Court of Appeals, or other Courts of Appeals and Federal District Courts in their decisions? Decisions denying the waivers continue to cite to case law from other circuits and Federal District Courts outside of this jurisdiction for authority. Contemporary decisions from this jurisdiction relating to "extreme hardship" are ignored in place of 1960 and 1970's case law. Please advise.

**Kathleen Rojas & Martha Nguyen: On November 17, 2005, officer's received new training on adjudicating I-601 waivers. They were educated on 9<sup>th</sup> Circuit case law regarding "extreme hardship." If any denials regarding non circuit case law, do a motion to reopen on Service error.**

13(A). What is the inquiry procedure for pending adjustment of status, I-751 and naturalization cases (especially El Monte), when:

- a. no other documents were requested;
- b. when asked for documents were submitted;
- c. when inquiries go unheeded.

Does the District have plans for a computer or telephone based case information (system similar the EOIR 1-800-# or other) other than the national Customer Service lines?

Please explain how the new national inquiry system work? What changes are being made to make it responsive?

**Martha Nguyen: I-751 are being processed her at the District Office. An individual can inquire through customer service 800#. If do telephone inquiry, the USCIS must respond within 30 days in writing.**

**LA inquiries may be done through infopass. Goal is to have all I-751 cases transferred from East L.A. office by March 2006. The only files that will remain in East L.A. are those that an officer is making decision on. Cases 2-3 years old, I-751 will be transferred to Room 2024.**

14. Carry Over Question: Expired Alien Registration Cards: Where and what is the address or procedure for returning the expired card?

**Martha Nguyen: IN El Monte, during citizenship interview turn in LPR cards. Can turn in expired LPR cards through infopass.**

15. Denial notices instruct applicants to send MTR Unit in Chicago. Please confirm attorneys can still bring motions to open/reconsider to the District Office and submit without a fee at Room 8323 when it is clear that case was denied for Service error.

**Martha Nguyen: MTR's may be submitted without a fee if based on legal error. Service error MTR's must be filed at Room 8323 or can go through Supervisor.**

16. 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. Why does this policy only exist in San Bernardino?

**Carry Over question.**

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

a) Have there been any staffing changes? **Dave Douglas is back at Regional and no longer Acting Assistant District Director. Bill Cass is Supervisor in Charge of I-751's at Room 8024. Robin Pignatelli acting for Martha Nguyen at Room 2050.**

b) Have there been any policy changes? **I-864 Memorandum issued in November 2005**

c) For adjustment of status applications for interviews at the Los Angeles District Office: **June 2005 filings.**

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

I-130 – **September 2004 filings for IJ cases. CSC transfers: April 2001.**  
I-751 (East Los Angeles and transferred cases to LA) – **Want to finish by end of March 2006.**  
I-140 (transferred cases) – **2 years from filing.**

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

1) What are the current processing times for:

I-130 -  
I-140 (transferred cases) - **As soon as transferred**

e) For adjustment of status applications pending in San Bernardino: **June 3, 2005 filings**

1) What are the current processing times for:

I-130 – **All in LA**  
I-140 (transferred cases) – **Done in LA**

For Naturalization applicants:

1) What is the current processing time between the date of filing and the preliminary interview? **Processing cases filed July 2005**

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

For LIFE legalization cases:

- 1) How many interviews have occurred? **10,035**
- 2) Second interviews? **4,640**
- 3) How many have been approved? **4,385**
- 4) How much notice is being given? **2-3 weeks notice**

Respectfully submitted,

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Treasurer  
AILA SOUTHERN CALIFORNIA CHAPTER