

August 3, 2005

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

CIS OFFICERS IN ATTENDANCE: JANE ARELLANO, SANY ALEGRIA, MARTHA NGUYEN, ELLEN WOO, MARY KOZLOWSI, ANTHONY LEW, DIANE ARMENTEROS, DENNIS PERRY, KATHLEEN ROJES

Dear Director:

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 July 28, 2005 meeting:

ADJUSTMENT OF STATUS/IMMIGRANT PETITIONS

- 1) For the past several weeks, the National Benefits Center has had no ASC appointments available anywhere in California. Since I-485 filings under the jurisdiction of the Los Angeles District Office require filing with the Chicago Lockbox and then self-scheduling an ASC appointment by phone with the National Benefits Center, how will the unavailability of ASC appointments impact the processing of these adjustment of status applications? Can applicants request ASC appointments directly from Room 1001 via InfoPass appointments? Will applicants still be able to request interim EAD's after 90 days via InfoPass appointments despite the delay in providing their biometrics caused by this blackout of appointments?

Jane Arellano: The scheduling of fingerprints was a problem, but NBC appears to have resolved the problem by expanding database and number of appointments at ASC. If try making appointment now, you will have better success than in the first week of implementation. ASC will only take applicants with I-797. The ninety-day to process the EAD begins with filing date on I-797. If more than 90 days, use infopass for interim EAD.

Diane Armenteros: Applicants will have to take 10-prints and biometric, two appointments. Better to make appointment once receive both I-797, one will have

Code 2 and other Code 3 on the I-797. Best to do both on same appointment, because if just do one, your client has to go back for the second set of prints.

2. Please update on emergency parole and expedited EAD procedures with Los Angeles adjustment cases now filed with the NBC. Prior to the new filing procedures we were able to gain expedited processing for employment authorization applications where the alien would lose job opportunity by waiting for long processing times on the EAD. Attorneys were also able to request expeditious handling of advance parole applications by emailing the request of the “emergency parole” to Dianne Armenteros.

Jane Arellano: Dennis Perry is assigned to Emergency Parole at Room 8559. Take request and will review expedited request.

3. A client going through Infopass for extension of the EAD (EAD expiring prior June 30, 2005) was told that file cannot be located and EAD cannot be issued. How should the I-765 application be filed?

Diane Armenteros: At time of infopass every effort is made to locate the file. Officers are instructed to obtain the file before give an EAD. If cannot, they have to come back another day when file is located. Let Diane Armenteros know if this is happening. They should have located the file.

4. For 485’s pending at Los Angeles District Office, where do we file EAD renewals? LOS or Chicago Lock Box? Does it matter if it is an employment-based I-485, which was transferred to the LA District Office for interview?

Jane Arellano: If it is an family based I-485, then renewals of EAD are filed at Chicago lockbox. If an employment based EAD transferred to LA District, then request infopass and request EAD at infopass appointment.

5. Aliens are reporting that it is very difficult to make an appointment for EADs and fingerprinting through the 800 number. Aliens from Los Angeles are either sent to the San Diego area application support centers for fingerprinting and EAD appointments or simply being told to keep calling back every morning for an appointment because there are no appointments available in Los Angeles county. As more and more cases are being submitted through the NBC will this become an even larger problem for the application support centers to handle in our area? Also aliens are being told after their EAD appointments that the EAD card will be mailed out to them. Normally does the application support center has the ability to produce EAD cards on the spot or must the cards be produced at a different facility and sent to the applicant at a later date?

Jane Arellano: Do not go and make appointments in San Diego. Have conferred with NBC and Headquarters and issues regarding delay on ASC appointments have been squared away with new database system. ASC’s will not issue EAD’s on the spot. EAD’s will be issued at a later date. DHS is working on ASC problem and if you try setting your ASC appointments now will, you should have result you want – local appointment.

6. Many cases that were filed a year or more ago have not been scheduled for an interview. Fax follow-ups and drop off follow-ups have not been responded to. What is the procedure for getting someone to actually review these cases and get them scheduled, i.e. whom do we contact and when and how should this be done?

Sany Alegria: Majority of cases not yet scheduled are awaiting relocation of other files. They have gone through them. Suggested AILA submit a list of "lost" files to Ellen Ma Lee, AILA Liaison, and hand deliver to address specific cases.

7. Any helpful tips in filing the I-130 and I-485 and other related petitions at Chicago lockbox? There have been repeated rejections, such as one check for each petition, etc. With this new procedure, what is the processing time from time of filing to interview? What happens after Chicago's processing the checks - sent back to local office for interview? Does Chicago issue work permit? What is the processing time on work permit? Does Chicago have a standard procedure to send all notices to the attorney-of-record instead of to the applicant?

Jane Arellano: Scheduling first Lockbox cases in LA in October 2005. Applications and money is received at Chicago lockbox, then files is routed to the National Benefits Center. NBC will then send notice to set up ASC appointment. EAD will be issued after fingerprints are captured. It should take approximately 90 days to get EAD from date of filing to lockbox.

8. A member of the general public filed pro se an I-130/I-485 combined processing at the local district office in March, for her husband (beneficiary) just before the change of procedure to file in Chicago. She never got back any work authorization appointment, travel permit, or fingerprint appointment or receipt. The checks appeared to have been cashed by the local INS office. What should she do to inquire about the status of the case?

Jane Arellano: Contact Jim Debates. He will do search and recover the application. Drop off inquiry attention to Jim Debates. Should do so if more than 90 days.

9. Where should adjustment of status applications be filed for DV winners whose numbers become current in September? The District is expected to handle these cases on an expedited basis because the applicants must adjust by September 30, 2005. We are concerned that filing through the Chicago Lockbox would lead to 4-6 week delays.

Jane/Sany: If individual has not filed for adjustment for DV visa now, DO NOT SEND to the lockbox. Because of expedited nature, the LA District will take the filing and give it expedited priority. Can go to Room 8010 and speak to Nadia Chiaranon and she will give you referral to fee in and take application. If already filed at lockbox

but no response, see Nadia so she can request the file. Do not wait to last minute because name and security checks can take weeks to clear.

10. How does one inquire on a DV adjustment of status application? Have any specific officers been assigned to adjudicate DV cases? In the recent past, especially 2 years ago, applicants “lost” their DV because the FBI checks were not completed, and the visa numbers became unavailable. Does the District have a separate system to monitor these applications?

Jane Arellano: As noted in answer to question #9, the District has an expedited procedure in place – use it. Even if you use expedited processing, the name and security checks are what could hold up the adjudication. File the DV adjustment with as soon as possible to avoid not having it adjudicate due to name and security checks.

11. There is often inconsistency in what income is considered for family-based adjustment cases. Some officers will require only current proof of combined income of both petitioner and beneficiary spouses, even if past income of just petitioner did not meet poverty guidelines; other officers insist on 3 years of taxes showing poverty guidelines met (problem when petitioning spouse was a student for 2 of the past 3 years but is now working with sufficient income). Some officers look at net income; others will consider adjusted gross and there is lots of confusion when the taxes are for a sole proprietorship with Schedules rather than straightforward W-2.

Can there be some guidelines issued that we can all refer to for providing a successful I-864 with minimum required supporting documentation.

Sany Alegria: Each officer must follow regulation and policy guidance – 8 CFR Section 213a.2. Supposed to look at past 3 years of taxes and only requires taxes if “required” to file. Taxes are part of the evidence looked at, not the whole analysis. Each case is looked at in its totality of circumstances to determine what is current income. If you feel that you have sufficiently documented the current income and feel officer is asking for ridiculous documentation discuss the matter with the officer’s supervisor.

12. On July 15, 2004, an MTR was filed for an adjustment of status application denied in error by the Service. To date no answer. Who can be contacted to inquire about the matter? The Service denied the application because the applicant had one arrest for “possession of a controlled substance” - he was diverted and the case dismissed – incredibly the Service cites Roldan in a June 2004 denial.

Jane Arellano: If you believe that the decision was Service error, you should speak to the Supervisor of the adjudicating officer that denied the case. If have a service error denial, can figure out which officer to go to by going to room 8010 and refer to proper supervisor. Any new MTR has to be filed with the Chicago Lockbox. If previously filed MTR and no response, can go to room 8323 and speak to team supervisor. Also suggest dong infopass to jumpstart the case because filed will be pulled and Diane Arementeros at infopass will get in touch with proper supervisor.

Mary Koslowski: For a pending Santa Ana case MTR, you can Fax an inquiry, (714) 972-6695.

13. What is current processing time on I-601 applications filed with the LA District? When the adjustment interview is conducted and an I-601 waiver is requested by the Service, who makes the decision on the I-601 waiver and where is the file located after the I-601 is submitted?

Jane Arellano: All officers are trained to adjudicate appropriate wavier. An adjudication of the a waiver should be completed within 180 days. You may file waiver with no fee together with adjustment of status at Chicago lockbox. You may also wait for interview date and take waiver with you with filing fee and officer will give you referral to fee in that day. Or you can get I-72 and mail waiver to Chicago Lockbox.

14. What is the procedure to file an inquiry following an I-485 interview and the grant of the green card is pending the result of the security clearance? It seems that for about 1/2 to 3/4 of adjustment interviews, the case is continued because the checks aren't completed. While we are happy that the District is so quickly scheduling adjustment interviews, the amount of cases continued for security clearances after the interview is rising as well as the time it takes to obtain the clearance.

Jane Arellano: Results from DHS conference is that 80% of clearance checks clear in quick period of time. No case will be approved without proper clearance checks being complied. There is no change in doing things, and no real time parameters for those cases that have been continued for name and security checks.

NATURALIZATION

15. What N-600 cases are being processed now? How may one submit an inquiry on N-600 cases, besides INFOPASS?

Anthony Lew: Processing April and May 2005 cases at this time. Infopass is only way to inquire on N-600 cases.

16. Family based adjustment, step-children (twin boys under 18) of USC. Mother and sister already adjusted and condition is removed on their case. The twin boys' cases are still pending clearance meanwhile mother is almost eligible to file N-400. Once the mother becomes a U.S. citizen and the boys' cases are still pending clearance, may we just apply for a U.S. passport for the boys under the Child Citizenship Act?

Anthony Lew: Will not answer case specific cases. However, generally, an LPR child under 18 (unmarried) with one USC parent with legal custody or living together with other parent, may request N-600.

REMOVAL

17. In the past, CIS (and legacy INS) could take jurisdiction over a case where a Notice to Appear (or an Order to Show Cause) was placed in an applicant's file, and logged into the computer system, but never filed with the Immigration Court. Usually, permission to file the case had to be obtained from an SDAO. What is the District procedure for this type of situation, now that all filing is done through the Chicago lockbox and the NBC?

Jane Arellano: Chicago lockbox and NBC do not request clearance letter. If NTA or OSC was never filed with the Court, the District will process the adjustment of status. No special permission is required, they will process and adjudicate the case.

18. Is there a formal procedure whereby a DAO can obtain a file from ICE to review in conjunction with the adjudication of an adjustment application. We have been told that because ICE is a separate agency, it has no obligation to forward such files to CIS and usually doesn't. As a result DAO's and the Continued Unit are unable to complete adjudications, even after repeatedly making requests for such files. If there is such a procedure, why don't the DAO's and the Continued Unit know about it? If there is no such procedure, what is being done to establish one? If ICE refuses to forward such files, can the DAO's and the Continued Unit be authorized to complete their adjudication without reviewing the ICE file?

Jane Arellano: If DAO requests a file, ICE should forward it to them. If ICE is working on an on-going investigation, they will contact the DAO, but will not send file until their ICE work is done.

MISCELLANEOUS

19. How are I-90s being processed? How long until receipt notices are issued? Case filed 3 three weeks with the Los Angeles lockbox and no receipt notice?

Diane Armenteros:

20. Does East LA office have a standard procedure to send out I-751 notices of interview and notices of decisions to the attorney-of-record? When the case is decided, whether favorable or unfavorable, should there be a written notice of decision sent? Should the examiner contact the attorney instead of the applicant regarding the case after the interview?

Dennis Perry: E. LA does have standard to send out notice to alien and attorney. If a case is decided a decision should be sent out and attorney should be contacted.

21. CIS often transfers an I-130 to Lincoln, NE if the applicant had an asylum approval before. Now, the clients marries a USC and he should be interviewed and decided by CIS LA not Lincoln or Anaheim asylum office.

Jane Arellano: The file will be requested from Nebraska for adjudication of the family based adjustment in the District office.

22. Texas Service Center transfers an undecided I-140 to LA which has no jurisdiction to adjudicate an I-140 and the client is not even in the United States. What is the procedure to have the file transferred back to Texas?

Jane Arellano: The District will send the case back to the proper service center. This question was answered in question number 7 of last month's meeting.

23. How can we find out the status of an I-687 (Application for Temporary Resident Status) filed in 1990, so that supplemental material may be submitted? Also, is it correct that no filing fee needs to be paid for such supplemental submission?

Dennis Perry: No filing fee is necessary for supplemental submission of documents on still pending I-687. However, for a case so old need to conduct record check to find out what happened.

CARRY OVER QUESTIONS

24. Nearly 5 years ago, on November 30, 2000, the former INS published a proposed rule in the Federal Register (Vol. 65, No. 231) concerning the repapering of individuals affected by IIRIRA's stop-time rule. When will persons who are in deportation proceedings be issued NTAs so they may go forward with their cancellation of removal hearings? Many clients have been waiting for years with no solution to their dilemma.

Kathleen Rojas: This is a national issue and should be ground through AILA's national office. Local ICE will not have specific information regarding the pending regulation.

25. Can AILA obtain a list of forms that will be accepted for filing at the LA DO?

Jane Arellano: New form is being handed out today and can be distributed by AILA to its members.

26. Does the USCIS intend to continue to call into question final judgments of divorce from the State of Nevada for California residents? What immigration or public policy purpose is served by this inquiry? Will USCIS deny immigration or citizenship benefits if it finds inadequate proof of residency for a person who has obtained a Nevada Divorce? Is there an operating instruction, training instruction or policy memorandum on this issue? Can the USCIS provide the case law and relevant section of the California Family Code to members. If the applicant's former spouse was residing in Nevada at the time of the divorce and filed the divorce in absentia, it should be recognized by USCIS as a valid divorce?

Kathleen Rojas: There is no official policy regarding Nevada divorces. However, officers can and should request documentation to show that a prior divorce is valid from any jurisdiction, assuming that the validity of the divorce has an effect on an applicant's eligibility for the current benefit for which he or she is applying.

UPDATE ON STAFFING AND POLICY CHANGES AND CURRENT PROCESSING TIMES:

a) Have there been any staffing changes?

Jane: Dave Douglas will be Acting Deputy Director for next 90 days.

b) Have there been any policy changes? **No.**

c) For adjustment of status applications filed with the Los Angeles District Office:

1) What are the current processing times for I-485s, I-765s, I-131s, I-130 and I-751?

I-485 – 4/2005

I-131 – Pre lockbox cases go to Dennis Perry – couple of days.

I-765 - See NBC dates on USCIS website; Immigration Court cases: 7/12/2005

I-130 - Court cases - 6/2004; CSC transfers - 08/2001; Other - 09/2004

I-751 - Joint waivers - 2/2005: No date on waiver cases

I-751 (East Los Angeles) -

2) How much notice is being given for appointments?

d) For adjustment of status application filed with the Santa Ana Sub-Office:

1) What are the current processing times for I-485s, I-765s and I-131s?

I-485 – 3/2005

I-131 - current

I-765 - current

2) How much notice is being given for appointments?

e) For adjustment of status applications transferred to the San Bernardino/Riverside Sub-Office;

1) What are the current processing times for I-485s, I-765s and I-131s?

I-485 – 04/2005

I-131 - 07/2005

I-765 – 90 days

2) How much notice is being given for appointments?

f) For Naturalization applicants:

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

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

g) For LIFE legalization cases:

1) How many interviews have occurred? **9,818**

2) Second interviews? **4,575**

3) How many have been approved? **2,828**

4) How much notice is being given? **3 weeks**

Respectfully submitted,

John Ayala
Secretary
AILA SOUTHERN CALIFORNIA CHAPTER