

September 22, 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 September 22, 2005 meeting:

ADJUSTMENT OF STATUS/IMMIGRANT PETITIONS

1. Carry Over Question: We have been told by the DAOs they cannot keep active files in their offices anymore. We have also been told these files will be sent off somewhere. Since the inquiry system is not working, how do we bring a case that may be continued for the lawyer to submit a missing document within a week or two to the attention of the DAO to complete processing?

David Douglas: A new inquiry system will be in effect next month, October 2005 and should be more efficient.

2. Carry Over Question: By signing the I-485 application form, an applicant who is male and under 26 years of age, automatically authorizes the USCIS to provide certain registration information to the Selective Service System in accordance with the Military Service Act and, upon acceptance of the adjustment of status application, authorizes the USCIS to transmit to the Selective Service System the applicant's name, current address, Social

Security Number and date of birth. Please confirm whether the Service has implemented a process to register applicants for Selective Service.

Jane Arellano & Wade Prater: At this time LA District filing will have officers hand out selective service registration cards to those aliens who are adjusted and eligible to register before age 26. They have authority to do, but are not obligated to do it.

The fact that an alien filed for adjustment of status, I-485, does not satisfy the selective service requirement for naturalization purposes, but will be looked to on a case by case basis to determine whether the alien was under the impression that he did satisfy the selective service requirement.

3. An asylee applied for I-130/485 thru marriage to USC. While he is waiting for the I-130 interview, his asylee green card arrives. Does he have the option to surrender his permanent resident status as an asylee and pursue the I-130/485 at the adjustment of status interview?

Jane Arellano & Jonathon Katz: Alien will not be permitted to withdraw his AS-6 LPR designation in order to adjust under a family or employment petition. She will have to keep designation until she naturalizes.

NATURALIZATION

4. On the N-445 question 4 "Have you been arrested, cited, charged, indicted, convicted, fined or imprisoned for breaking or violating any law or ordinance, including traffic violations?" If the applicant gets a traffic citation, say a speeding ticket, and answer yes for question 4, does that mean automatically, he will not be sworn in that day? Will the district do a motion to reopen on its own? Can the applicant bring the citation and receipt showing fine paid at the oath ceremony?

Wade Prater: No. If an alien is convicted of a crime or has been cited, she must disclose such incident prior to naturalization. An officer will review the nature of conviction or infraction. Some aliens will be allowed to proceed to naturalize despite infraction, i.e., traffic ticket indicating fine was paid (alien should take proof to date of ceremony). If DHS feels that new crime impedes (probation imposed, good moral character, deportable) naturalization, they will pull person out of ceremony schedule and will do a motion to reopen to rescind naturalization approval.

REMOVAL

5. Carry Over Question: When an individual is granted Adjustment of Status or Cancellation of Removal by an IJ, should we still fax the order and G-28 to E.LA or should we just make an INFOPASS appointment? Does it matter whether it is a pre- or post- 4/1/05 case? If the individual's passport is in the A-file, how can (s)he get the passport back? Please explain the procedures taken after an IJ grant and which agency has which responsibilities. It is often difficult to track down the A-file to get passport and other documents returned. It has also happened that the "system" (CIS?) has not been updated with the grant.

Jane Arellano & David Douglas: At this point fax request to Plaza de Sol. However, we are working on a new database. Soon all files are going to be transferred from E.LA to 300 N. Los Angeles Street, Los Angeles, California so that DRO can have the file in the same building that I-551 gets processed, and the file remains in the same building. Doing an infopass should be a method in which to have contents (passport/LPR card) of the file belonging to client on a closed case returned.

6. What is the proper fax number at Plaza Del Sol for Court approved cases prior to April 1, 2005? We have received reports that (323) 262-8415, a number previously given, is always giving a busy tone?

Jane Arellano: New fax number (323) 881-3198.

7. When filing an I-264 (Stay of Removal), does filing one application with one filing fee cover dependent family members, or does a separate application have to be filed for each A#?

Jonathon Katz: Based on 8 CFR Section 103.7(e)(1), you have to file separate I-246 request for each individual family member.

MISCELLANEOUS

8. Carry Over Question: Applicants who are instructed to re-file the I-751 with a waiver because their marriage ended while the joint I-751 petition was pending often do not receive a second filing receipt from the Service Center. Status checks shows that the A file is with the district office and cases are still pending. What is the District's policy with regard to the conversion of I-751s [from joint petition to self petition based on the bona fide marriage waiver]? What is the processing time for these cases?

Dennis Perry: The key is that the Marriage Fraud unit only takes one I-751 at a time. The first one filed as "joint" would have to be withdrawn before a second I-751 is filed. System will only recognize one pending I-751. Therefore, fax a withdrawal of the first "joint" petition at (323) 881-3198, so that second I-751 can be accepted. You must file that I-751 at Service Center. You cannot show up to an interview with a new filing fee and a new I-751.

9. How can we inquire on I-601 cases which have been pending for 2-3 years?

Jane Arellano: Infopass.

10. a. If an attorney has been mailed a notice by a DAO requesting an I-601 waiver, and the attorney contends that his client is not subject to grounds of inadmissibility warranting an I-601 waiver, where can attorney go to contest this finding? Who are the proper supervisors to go to at Room 8010, Room 6024, Room 2050? What if you do talk to a supervisor and the supervisor advises you not to file the waiver until it is reviewed by the supervisor and officer, and you wait, and you obtain a denial of your client's case for you failure to file a waiver (when the supervisor advised you that if it was needed it would be requested again)?

Go to the Supervisor of the officer who made the decision in the case. If the decision is not correct the Supervisor will review it. As to fill out a supervisory inquiry form when speak to officer. Supervisor information can be obtained at adjudication room. Sani Alegria is one supervisor at 8010, Robin Pignatelli is at 2050, and at 6024 you have Wade Prater, Anthony Lew. Best advise is to speak to the supervisor personally. If the cases is denied file a motion to reopen and issue will be reviewed.

b. Are your DAO officers aware of Ninth Circuit holdings, *Garcia-Lopez v. Ashcroft*, 334 F.3d 840 (9th Cir. 2003)(for offenses that can be charged as felony or misdemeanor, it is clear that a courts last designation is binding on BIA for purposes of interpreting INA) and *Lafarga v. INS*, 170 F.3d 1213 (9th Cir. 1999)(offense originally designated as felony but later designated as misdemeanor by court is a misdemeanor for all purposes)? Some officers believe that having a felony reduced to a misdemeanor is an "expungement" and therefore give the change of designation no legal effect and request I-601 waivers for aliens who otherwise qualify under the petty offense exception for grounds of inadmissibility. If this happens, whom do we speak to? If the Supervisor is not available, what do we do, especially if the I-601 request was received via mail?"

If a legal issue, officer will take it to a supervisor and they will contact CIS attorney to help on these type of cases. Attorneys should go through the supervisor. If case is denied and you feel legally incorrect, then file a motion to reopen and the case will be brought to the attention if a legal error was made.

11. Since all FOIA requests are now processed through the National Records Center (NRC), will applications for adjustment of status or naturalization be delayed while the Los Angeles District Office waits for the A files to be returned? Is there a system in place for the return of the files for adjudication? What is the appropriate amount of time to wait for a file to be returned? Is Shona Wilson the LA District Office's liaison with the NRC FOIA Division?

Jane Arellano: Naturalization work remains the same. The transfer of FOIA has had no effect on obtaining files for naturalization. A file request has a three-day turnaround. Shonnas will not be a point of contact with NRC. You must contact them at the NRC for FOIA requests.

UPDATE FROM DISTRICT:

Jane Arellano: In light of Hurricane Katrina, some aliens affected have made it to the Los Angeles area. These individuals may have lost naturalization certificates, proof of lawful status, etc... Have guidance from headquarters to authorize fee waivers to those affected.

Will entertain on a case by case basis. They will obviously have to prove that they lived in the affected region. If you encounter them, get them to an infopass officer where they should be directed to Supervisor Dianne Armenteros.

David Douglas: New I-90 procedures is in effect as of August 22, 2005.

David Douglas: Also new inquiry system is going to be implemented soon, where officer will try to give you a designated time when case should be adjudicated or when can inquire further. The times will be either a 30 days/90 day/180 day period. Officer will hand notice to you. Should be functioning in mid October.

Mary Kozlowski: From now on Santa Ana will not be as permissive regarding re-scheduling of interviews. However, will still consider extension requests on a case by case basis. Not so flexible now.

UPDATE ON STAFFING AND POLICY CHANGES AND CURRENT PROCESSING TIMES:

a) Have there been any staffing changes?

Jane Arellano: Nationally, Terry O'Riley is retiring. Bill Yates is retiring.

Locally, Beverly Lieberman, end of temporary promotion. Cathy Stancill will be assigned new duties at Citizenship office. Daphne Lu is temporarily taking over duties for Ellen Wu.

b) Have there been any policy changes?

Jane Arellano: Trying not to issue I-551 stamps. LPR cards are processed within a week or two of adjudication. Will only issue I-551 in limited situations/emergent circumstances.

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

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

I-130 - IJ cases – 8/04. Service Center transfer – 9/01, Other: 09/04

I-751 – 03/04

I-751 (East Los Angeles) – no information

For Naturalization applicants:

1) What is the current processing time between the date of filing and the preliminary interview? **8 months from filing. Santa Ana is 5 months from filing.**

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

For LIFE legalization cases:

- 1) How many interviews have occurred? **9882**
- 2) Second interviews? **4583**
- 3) How many have been approved? **3291**
- 4) How much notice is being given? **2-3 weeks**

Respectfully submitted,

Naveen Rahman

Treasurer

AILA SOUTHERN CALIFORNIA CHAPTER