

In 1989, Congress enacted the H-1A nonimmigrant visa category as a response to a sustained shortage of registered nurses (RNs). Although originally intended to end on September 30, 1995, the program was extended through legislation until September 1997.

On November 12, 1999, President Clinton signed into law H.R. 441, the "Nursing Relief for Disadvantaged Areas Act" (Public Law 106-095). This law repealed the H-1A visa for nurses and created a new nonimmigrant visa category, the H-1C visa, for nurses who will work in areas designated as "Health Professional Shortage Areas by the Department of Health and Human Services." The H-1C visa, which is more restrictive in its application than the H-1A visa, has been extended until December 20, 2009.

The H-1A and H-1C visas were specifically created for RNs. So far, Congress has not sought to reenact those or a similar nurse-oriented classification. For the reasons stated above, all nurses do not fit under the H-1B classification.

5. Adjustment of Status for Nurses -- Is adjustment of status an option right now given the visa limitations at the Dept of State?

- **USCIS Response:** The limitations on the availability of immigrant visas apply to adjustment applicants, just as they do to immigrant visa applicants. For this reason, if no immigrant visa numbers are available for purposes of issuing an immigrant visa, adjustment of status is also unavailable. Registered nurses will generally file for adjustment of status, or for immigrant visas, under the employment-based third preference (EB3) visa category. At this time, there are no visas current for the EB3 category, and this situation applies to adjustment applicants as well as to immigrant visa applicants. Please check the Department of State's monthly Visa Bulletin for visa availability: http://travel.state.gov/visa/frvi/bulletin/bulletin_1770.html.

6. Priority for Nurses? – One email noted that priority dates are based on date of filing and not on type of occupation. With shortages in certain industries, such as nursing and pharmacy, is USCIS doing anything differently in the adjudication process to address occupational shortages?

USCIS Summer 2007 Application Surge: "How Is It Affecting You Now?" May 30, 2008

The following are questions from the teleconference and the answers received from USCIS.

- 1. I-140 Prolonged Processing Times** -- One caller noted that the processing times for I-140s have not moved in the last year. What is the reason for the prolonged processing times for the I-140s?
- 2. Inconsistent Processing Times** – A caller asked why the Vermont Service Center (VSC) is so far behind in processing the I-140 applications compared to the other service centers? Do service centers have different priorities?
- 3. Pre-adjudication** -- Can USCIS provide further clarification on whether there is pre-adjudication of I-140s?
- 4. Medical Examination Requirement** -- USCIS suspended the physical exam requirement during the surge and noted that it could be forwarded later upon request. When will the applicant be notified regarding the medical exam? What if the applicant travels and cannot respond timely?
- 5. AC21 Portability** – A caller asked if USCIS will allow flexibility in AC21 portability because of the delays related to the surge?
- 6. Fingerprints Notices** -- Several callers noted that they have not yet received fingerprint notices and are concerned that their case is further delayed. When should an applicant expect to receive a fingerprint notice?
- 7. Inconsistent Information with Customer Service Avenues** -- One caller noted that he filed an I-140/I-485 petition with the Nebraska Service Center (NSC). The case was transferred to the VSC and later to the Texas Service Center (TSC). USCIS' National Customer Service Center indicated that the case was at the VSC, but USCIS' Case Status Online indicated that the case was at the TSC. The receipt notices for the I-140 and I-485 note different service centers. Does USCIS split up I-140 and I-485 petitions that are concurrently filed? How can

the applicant find out where the case is actually being processed?

Note – Answers to other important questions asked during this call may be answered in connection with other Ombudsman teleconferences.

Questions Received Prior to the Call

1. Green Card Cases Pending Due to FBI Name Checks – The email indicated that earlier USCIS identified about 47,000 cases pending FBI security clearance for more than six months. The email asked if USCIS could confirm that those cases were adjusted accordingly by the respective service centers.

- **USCIS Response:** To clarify, USCIS did not state that it had identified 47,000 cases that were pending FBI Name Check clearance “for more than six months.” Rather, USCIS stated that it had identified approximately 47,000 cases that remained pending **solely** because of the FBI Name Check. A portion of those 47,000 cases involved FBI Name Checks that had been pending more than six months.

In May 2008, USCIS identified 10,500 I-485 cases that were pending solely because of the FBI Name Check. In the prior three months, from February to May 2008, USCIS noted a reduction in the total number of I-485 cases in this category by 36,500. Please note that the FBI Name Check category involves a constant flow of cases (meaning cases are continually referred by USCIS to the FBI for processing, and cases are continually returned by the FBI to USCIS). Our systems do not perform case-by-case tracking. Thus, while all 47,000 cases referenced earlier **may** have been adjudicated at this point, we can only definitively state that at least 36,500 cases from that time period have been completely adjudicated.

2. Joint USCIS FBI Press Release on Name Checks – The email noted that in an April 2, 2008 joint press release, “USCIS and FBI Release Joint Plan to Eliminate Backlog of FBI Name Checks,” certain milestones were established. The email asked if USCIS could describe the progress of these targets.

- **USCIS Response:** The first milestone was for all FBI Name Checks pending for more than four years to be finalized by March 31, 2008. The second milestone was for all FBI Name Checks older than three years to be finalized by May 31. The third milestone was for all FBI Name Checks older than two years to be finalized by July 31. The first three milestones have all been met. USCIS and the FBI have set four additional milestones. As of August 4, the agencies were on target to achieve all four of the remaining milestones.

3. Transferred Cases – Can USCIS explain what is happening to cases that were transferred, for example, from the Nebraska Service Center to the Texas Service Center? One person emailed and said it appears that those cases have a lower priority for processing. Please clarify.

- **USCIS Response:** Transferred cases are incorporated into TSC's workflow based upon the filing date of the case and are not given a lower priority for processing than cases originally filed at the TSC. However, this interfiling process within the I-140 workflow may result in a short-term delay in processing given the volume of cases.

4. R-1 Extension – The email indicated that the individual filed Form I-129 for an R-1 extension last year in May and the visa expired in July. The question was how much longer to wait?

- **USCIS Response:** The petitioner should contact USCIS' National Customer Service Center (NCSC) at 1-800-375-5283 for a status update.

5. Posted Processing Times – The email indicated that the I-140 was pending more than 320 days even though USCIS' posted processing times showed that the application already should have been processed. Are the processing times a real reflection of what is going on?

6. Tracking Case Status – The email asked how to track the status of an I-140 application if it is not listed on USCIS' Case Status Online and the call center does not have any information?

7. Fingerprints -- Fingerprints are valid for 15 months and the Employment Authorization Document (EAD) is valid for one year. The email noted that requiring the applicant to obtain fingerprints for the EAD renewal leads to processing delays for the EAD and places an unnecessary burden on the applicant who may have to take off work. Why does USCIS require the applicant to obtain new fingerprints before they expire?

CIS Ombudsman's 2008 Annual Report: "Your Questions and Comments" July 29, 2008

The following are questions from the teleconference we will post answers from USCIS when they are available.

1. Lack of Communication re Production of Green Card – A caller described a lack of communication with USCIS regarding receipt of the actual green card after approval of the green card application. Upon not receiving the card, the caller called USCIS. The call representative said to wait 30 days. The caller again called USCIS after not receiving the card and USCIS gave the same answer. At an Infopass appointment, the officer expedited the card. The caller waited another 30 days, called USCIS, and was told to wait another 45 days. The caller had not moved over this time. How can USCIS track whether a card has been mailed?

2. Premium Processing – One caller asked if USCIS is considering expansion of premium processing to other types of applications. Can you please provide information that supplements USCIS' June 16, 2008 press release on premium processing?

3. I-140 Processing – A caller asked if USCIS could publish on its website monthly or quarterly I-140 reports to increase transparency in processing.

4. Multi-year Employment Authorization Documents (EADs) – A caller expressed confusion as to why an I-140 must first be approved before a multi-year EAD can be issued. Please explain.

5. First In First Out (FIFO) Processing – A caller asked if USCIS is processing cases based on the received date or the system entry date? The caller observed that it appears that USCIS is not processing applications as they are received. Callers also indicated that their cases were past the posted processing times. Can USCIS please explain why that might be happening? Also, callers observed that some service centers were much slower than others. Please explain.

6. I-140 Stand Alone versus Concurrent Processing – Several callers observed that USCIS appears to be processing I-140 stand alone applications differently than those concurrently filed with an I-485. Many callers also mentioned that most of the issue appears to be with the Texas Service Center. Please explain.

7. EAD Renewals – A caller asked whether I-485 receipt notices are required for EAD renewals. USCIS indicated to the caller that a receipt notice is required, but the instructions do not require one. Please explain.

Another caller mentioned that the start date of EAD renewal cards should be the approved date of the new EAD card, or the expiration date of the old one. In April 2006, the Ombudsman recommended that USCIS issue an EAD valid as of the date an earlier EAD received by the applicant expired (Recommendation #25). The Ombudsman understands that USCIS was planning to assess the possibility of adjusting its system to allow production of EADs with the synchronized validity dates. Can USCIS provide a further update?

This page was last reviewed/modified on August 27, 2008.