Office of Communications

U.S. Citizenship and Immigration Services

Community Relations

Question & Answer

September 30, 2008
Revised October 21, 2008

USCIS NATIONAL STAKEHOLDER MEETING

Answers to National Stakeholder Questions

Note: The next stakeholder meeting will be held on November 13, 2008 at 2:00 pm.

1. **Question:** We understand that as part of the business transformation plan, USCIS is planning to restructure business processes and IT systems and plans to move away from a paper-based application/petition filing system to an account-based/electronic processing system. Could you please provide more information about this plan including an estimated time frame for completing it? Does USCIS anticipate that it ultimately will only allow all new applications/petitions to be filed electronically through a USCIS Internet web-based portal? Does USCIS intend to maintain a paper filing option?

   Response: As stated in the Request for Proposals (RFP) for the USCIS Transformation Program Solution Architect, the Agency envisions the transformed environment to be deployed in four increments relating to the major types of benefits over five years. The planned sequencing of increments is citizenship, immigrant, humanitarian and non-immigrant. However, the RFP encouraged Offerors to propose alternative solutions that might allow for an accelerated time table without increasing risk or cost. While this procurement has a five-year span, we anticipate the change process begun under this task order will continue beyond that period.

   Regarding filing options, we plan to maintain multiple channels through which applications will be accepted, including paper filing. Access to benefits remains a paramount concern and USCIS will continue to look for ways to simplify filing procedures and increase the number of channels through which requests for benefits are accepted.

2. **Question:** The text of the proposed fee rule published on February 1, 2007 (in 72 FR 21 at page 4899) provided that one of the reasons for the 2007 fee increase was "to enhance the delivery of secure documents." The proposed rule text further states, "USCIS and USPS have partnered to develop and implement a process wherein the documents would be delivered via USPS priority mail with delivery confirmation. The additional funding [from the proposed increased fees] will enable USCIS to track delivery of each document and to respond to queries from applicants regarding the status of document delivery." Please update us on USCIS' plans to implement this process/initiative.

   Response: We are in the process of implementing the full Secure Mailing Initiative (SMI) as identified in the USCIS Fee Rule. On July 21, 2008 we began a pilot of the SMI program. We are currently delivering all Refugee Travel Documents and Re-entry Permits using U.S. Postal Service (USPS) Priority Mail with Delivery Confirmation. The pilot is working extremely well. Since its inception over 18,000 Travel Document booklets have been mailed using this protocol.

   The full SMI project will involve mailing all Permanent Resident Cards and, Employment Authorization Documents, as well as the documents included in the pilot via USPS Priority Mail with automated delivery confirmation. Customers will be able to access delivery tracking information through the USCIS website (uscis.gov) when they track the status of their application via USCIS' Case Status On-line

capability. The SMI project will enhance the security, integrity, and accountability of the document delivery process.

We anticipate rolling out our new production platforms in March of 2009. We are hoping that our IT Department will be ready with the full technical solution for this initiative at that time. If not, we still intend to mail the cards using USPS Priority Mail with Delivery confirmation at that time and the USCIS website feature will come on-line as soon as it is available. However, as it does today, the USCIS website will advise the status of the approval of the application based on the receipt number.

3. **Question:** Can you please comment on whether the Texas Service Center follows the same procedures as the Nebraska Service Center when adjudicating I-730 petitions for Montagnards from Vietnam, in light of certain documentary challenges within this community? We have noticed some distinct differences, specifically relating to evidentiary requirements, in the manner in which Texas is processing these cases. In the past, Montagnards from Vietnam have been given leniency with documentary issues as they historically do not register births/deaths/marriages/divorces. Many times they won't get birth certificates (if they do at all) until many years after the child is born. There is an extremely low level of fraud in this community coupled with a high level of fear of the civil authorities due to a history of high discrimination/persecution of Montagnards by these authorities. The Nebraska Service Center recognizes that affidavits, not civil documents, are usually acceptable for this population because, in many cases, that is the only thing available. Recently, we have seen RFE's from the Texas Service Center as follows:

   a. Late issued birth certificate was rejected, the RFE asked only for other (impossible to obtain) civil documentation.

   b. An RFE was issued for a case where the petitioner didn't list the child on Form I-590 when he was being processed in Cambodia. However, it was clear the client did list the child (USCIS provided a copy of the I-590 that lists the child), but was unsure of the exact date of the child's birth. As a result, the petitioner gave only the year of birth, which was recorded on the I-590 as 1/1/2004 (real birth day is 3/9/2004). Civil documents were requested in an RFE for proof of date of birth.

   c. Montagnards put "H" (for women) or "Y" (for men) in front of people's names as an indication of gender. On the I-590, a client listed the female child's name as "Sun" and on the I-730 petition as "H-Sun." This is something that happens all the time with this group, and never has been an issue in the past with the Nebraska Service Center. Again, Texas Service Center requested civil documents to clarify.

   d. Can the Texas Service Center be made aware that often the interviews in Cambodia take place in Vietnamese, which is not the native language of Montagnards? (They have 30+ tribal languages, none of which are linguistically related to Vietnamese.) The interviews in Vietnamese add to fear as Vietnamese is the language of their persecutors, and many refugees believe that the translators used in the camps are connected in some way to the Vietnamese government.

   Response: Texas and Nebraska Service Centers have been given the same training on how to handle these cases. If there is an inconsistency, it is probably a training issue. If you can give us receipt numbers and names on the cases mentioned above, we'll look into it. If there is a training issue, we'll work with the Texas Service Center on it. If there is another issue, we will explain it to the applicant or the applicant's representative, if a G28 is on file.

4. **Question:** In representing a HRIFA dependent a I-485 was filed in conjunction with I-601 (use of false documents) at Nebraska. Attended I-485 interview in April this year. Applicant came with LPR spouse who was willing to be interviewed on hardship issues for I-601, told not necessary by officer. Request for additional evidence sent May 1 with 90 days to provide evidence. Before 90 days have passed, I-601 denied and Notice of Intent to Deny I-485 sent. I-601 appealed to AAO and NOID addressed in a timely fashion. I-601 appeal receipted by District Office. Fourteen days later, I-485 denied and the reason given was that I-601 was denied. District Office is fully aware that the I-601 is on appeal. District Office is aware that the I-601 is on appeal but indicated that once the AAO renders a decision on the I-601 appeal, this office will review the I-485 decision. If the appeal is approved, USCIS will reopen the I-485 on a Service motion to reopen. If the appeal is dismissed or denied, the I-485 will remain denied. The I-485 will not be held in abeyance while the AAO renders a decision on the appeal.

   a. How can the adjustment be denied when there isn't a final decision on the waiver of inadmissibility?

   b. Is this a decision that is solely up to the discretion of the individual District Directors?

   c. Should special consideration be given to applicants under a remedial statute such as HRIFA?

   d. Doesn't this create a potential conflict should the individual be put in proceedings with EOIR? (Applicant can renew I-485 but IJ won't be able to rule on the waiver as there is no final decision from USCIS.)

   Response: The decision on an adjustment of status case is discretionary for which there are many factors and variables which must be considered before a final determination is made. Each case is evaluated based on the individual set of circumstances involved. Without knowing the exact situation and specifics for the case cited, it is not possible to provide a specific response to each of the above questions. However, we acknowledge that if the timeline of the case is in fact as it appears above, USCIS should have waited for the applicant to respond to the RFE prior to issuing a denial of the I-601 and the NOID for the I-485. Based on the above, we will undertake a review of the protocols followed by our field offices and service centers to insure consistency in the adjudicative process in cases involving an I-601 and I-485.

5. **Question:** We have a case where it has been confirmed by USCIS that the security checks have not been completed. The client received I-551 stamp on March 11, 2008 (after waiting for 3 ½ years for the I-485 to be approved b/c of name check delay), but has yet to receive his actual green card. He called the Customer Service number and was told card production was not ordered. He was told to contact his local office where he was told that he needed to be patient. In a case where an adjustment of status application is approved before security checks are complete under the new policy, is it USCIS policy only to issue the I-551 stamp, but not the actual residence card, until security checks are complete?

   Response: No, this is not USCIS policy. Pursuant to the new policy dated February 4, 2008, USCIS will adjudicate the application based on all required evidence outlined in applicable law and regulation if the application is otherwise approvable, outside of normal processing times, and the FBI name check request has been pending for more than 180 days, and continue with card production. Since USCIS has improved the card production process and our applicants generally now receive their Permanent Resident Cards within 7-10 days of approval, automatically issuing an I-551 stamp is no longer necessary or common practice. However, each field office will entertain requests for the I-551 stamp for those applicants who have a specific need.

6. **Question:** In June 2008, CLINIC sent a letter to USCIS HQ expressing concern about the increase in inquiries it has received from its affiliate network regarding cases where an applicant was approved for but did not receive a USCIS issued document (green card or employment authorization document (EAD)) when his/her correct address was on record with USCIS. In these cases, USCIS has informed the applicants that agency records show that such a document was indeed mailed to the applicant and that the document was not returned to USCIS as undeliverable; therefore the applicant must file and pay for a replacement document. We included multiple examples of this problem in our letter to USCIS HQ and asked HQ to research the cases to determine/identify any potential glitch in the card production and mailing system. Please update us on the status of this request.

   Response: We are committed to the prompt and accurate delivery of secure documents to our customers and are proud to advise you that we began a pilot of the SMI program on July 21, 2008. We are currently delivering all Refugee travel documents and Re-entry Permits using U.S. Postal Service (USPS) Priority Mail with delivery confirmation. The pilot is working extremely well and the next phase of SMI will include permanent resident cards and employment authorization cards using this method.

   Presently, completed cards are mailed to the addresses that exist in our case processing system. Once cases are approved, the address information is sent to card production. The SMI would certainly have been a valuable tool to assist with the cases mentioned in the question above. However, our data indicates that the various cards were produced and mailed. A representative from our Office of Service Center Operations (SCOPS) will continue to work with the applicants directly to resolve their issues.

7. **Question:** When there is a G-28 on file, are the notices/documents listed below sent to both the representative of record and the applicant/petitioner? If not, please indicate to which (representative or applicant) each notice/document is sent when there is a G-28 on file.
   - I-797 receipt notice
   - I-797 approval notice
   - Denial notice
   - Transfer notice
   - Request for evidence
   - Notice of intent to deny
   - ASC appointment notice
   - EAD card
   - Advance parole document

   Response: The EAD is sent to the applicant/petitioner. Each of the other notices listed is sent to both the applicant/petitioner and the representative of record.

8. **Question:** Some USCIS District Offices have meetings with local CBOs where both general policy questions and case specific inquiries are part of the meeting. The meetings greatly benefit both community based organizations and lead to increased efficiency for USCIS district offices. A model for such meetings is as follows: Case specific inquiries are limited to inquiries on cases where the CBO has a G-28 on file; where the case has been pending for more than the normal USCIS processing time; and where the CBO has first tried to resolve using the normal channels. The questions are collected and vetted by a single CBO. The vetting organization verifies that the issue is one over which the USCIS Office has jurisdiction, ensures that all necessary information is included, that the question is clearly stated, and sends the inquiries to the USCIS Office all at once in advance of the liaison meeting. This system ensures that local District Offices do not receive questions over which they have no jurisdiction and which could be resolved via InfoPass. It ensures that cases that may have fallen through the cracks get "worked" or the attention they merit. As such, the system leads to greater efficiency for all parties involved. This model is similar to the model that some

AILA/CBOs currently have with USCIS offices in different parts of the country. Will USCIS HQ encourage the development of such meetings in districts where they do not currently exist?

Response: We encourage all district and field offices to host external stakeholder meetings and we believe that all offices do. If you hear of offices that are not hosting these meetings, please let us know. The format of the meetings will depend on the particular circumstances of the local office and are within the discretion of the district leadership. If a CBO wishes to see a format change, they should bring that to the attention of the district.

9. **Question:** Can you please provide an update on USCIS' efforts to revise the Form N-648? How many comments were received on the form revisions, and what was the nature of those comments?

   Response: In Federal Register notices of April 14 and June 27, 2008, USCIS solicited comments regarding its plan to amend Form N-648. The focus of the form revision has been to improve implementation of existing regulations and the May 2006 and September 2007 guidance memoranda on that subject; and more particularly, to reduce the incidence of N-648 rejections and continuances by helping prospective applicants and medical professionals to avoid incorrect submissions and to prepare better documented certifications.

   By the close of both comment solicitation periods, additional comments were received from four organizations. Most of the comments received expressed concerns and suggestions that had been communicated to USCIS on previous occasions and therefore had been anticipated by USCIS in drafting its revision of the N-648; however, some additional constructive suggestions were considered in the further modification of the form's instructions. USCIS expects publication of the revised Form N-648 during the fall of this year.

10. **Question:** What will happen with the religious worker provision which is set to sunset on 9-30-08?

    Response: Congress authorized a 6-month extension of this provision, but the extension will not take effect until publication of a Federal Register notice confirming issuance of related (fraud) regulations. Both the notice and the regulations are pending final clearance. Please rest assured that USCIS is making every effort to ensure prompt action related to this important information. Meanwhile, USCIS has suspended the adjudication of applications made on the Form I-360 (Petitions for Amerasian, Widow(er), or Special Immigrant), as well as the Form I-485 (Applications to Register Permanent Residence or Adjust Status), where the latter is based on an approved Form I-360. As soon as the notice and regulations are released, all pending applications will be adjudicated accordingly. USCIS will issue Requests for Evidence (RFE) for any necessary information not required under the original regulations.

    Until the new regulation is adopted, USCIS will reject all Form I-360s and Form I-485s filed for non-ministers.

11. **Question:** We have a number of date availability questions. They are:

    a. What is the demographic makeup of those in the current backlog? Can we get data on their nationality?

       Response: No, demographic data is not currently available and would require a special Information Technology Service Request (ITSR) be drafted and submitted to the Office of Information Technology

(OIT). The administrative burden on USCIS to pursue an ITSR solution and add an additional workload on the O&M contractor cannot be justified given the level of effort involved.

b. We understand that USCIS is procuring new technology. Will the new technology enable increased or more rapid collection of data points for immigration-related research? For example, will there be new variables available to researchers and/or will the new technology decrease the amount of time between data collection and public posting of data? During the procurement process, is there a mechanism for us to suggest what statistics and data items might be especially helpful to immigration researchers?

Response: The RFP for the USCIS Transformation Program Solution Architect lists a number of performance objectives for the Solution Architect Task Order that relate to this question. These include:

- Provide a seamless, flexible, and logical integration of data supporting the business process to support improved decision integrity
- Provide for enhanced data integration, and storage as appropriate, to enable improved information and knowledge sharing within, and minimize research outside of, the Integrated Operating Environment
- Provide enhanced data integrity and data-sharing capabilities with other federal, state and local agencies as well as international and private entities

While there is no mechanism at this point in the procurement process for changing the objectives against which Offerors submit their proposals, after a task order has been awarded USCIS does plan on engaging with our immigration partners and stakeholders to identify their data needs and requirements. We anticipate this engagement beginning shortly after the task order is awarded and continuing through the five-year span of this initiative.

c. What is the difference between the "active cycle time" (from the monthly PAS data) and the "processing time" posted online?

Response: The terms “active cycle time” and “processing time” are synonymous. The posting of the “processing times” on the USCIS Web is calculated using end of month production statistics that have been captured and audited within the Performance Analysis System (PAS). The same statistical data points are also used to calculate “active cycle times”, however, because active cycle time information can be calculated at any point in time and is not based upon final end of month audited data, the “active cycle time” information is subject to greater variability than the “processing time” information that is posted on the web only once per month.

d. What type of data is USCIS gathering on the impact of the new naturalization exam? Will we have access to data by district? Demographic data? Pass/fail rates?

Response: USCIS is currently reviewing data collection methods to capture the pass/fail rate and demographic data for the redesigned naturalization test. USCIS will make this data publicly available.

12**. Question:** Although USCIS issued the Feb 4th Memo on FBI Name Check, there still are cases where name check has been pending for more than 400 days and PD is current but the petitioner was told by TSC CSR that he has to wait for name check clear for his I-485 to move forward. Is the memo still in effect? If so, how would USCIS ensure it is being carried out by individual service centers and officers? We also would like to

suggest that Name Check results such as "initiated on mm/dd/yy" and "cleared on mm/dd/yy" should be available online in USCIS online case status service. That would cut down a lot of unnecessary InfoPass appointments and phone calls to USCIS service centers.

Response: Yes, the February 4, Memo on FBI Name Check is still in effect. Please provide the receipt number of this case and we'll look into it.

13. **Question:** In TSC and NSC, there is dramatic delay for last July/August concurrently filed I-140. At the same time, TSC quickly approved many non-concurrently filed I-140 with application mailing dates later than last August and even in 2008. So far, the average waiting time for concurrent filers > 300 days and for non-concurrent is around 80 days, according to some voluntary tracking data. Is that delay caused by the Plus Pilot program installed in TSC in Feb 2008, under which the entire I-140 and I-485 package is reviewed by one officer? If so, does that mean I-140s won't be processed and approved until the petitioner's Priority Date becomes Current? A delay of processing, and then denial, in I-140 adjudication could cause serious could cause serious problems for I-485 portability.

    Response: Visa availability has been the primary focus at the Texas Service Center and the Nebraska Service Center for concurrent filings and stand alone I-485s. In recent weeks, we have identified I-140 petitions that have been held up because of visas are not available. These filings are placed in the workflow by I-140 processing date within the range of those that were processed after having been filed independent of an adjustment application. The instance of delayed I-140 adjudication should decrease significantly. Petitions that are outside of the posted processing dates can be raised to our attention through the 1 800 customer service number.

14. **Question:** The Ombudsman 2008 Annual Report mentioned that USCIS was going to reinstitute Premium Processing for certain I-140 petitions. Has that happened yet? What additional steps could USCIS take to resume Premium Processing of I-140 for all petitioners by relaxing the restrictions on eligibility?

    Response: Premium processing for those I-140 petitions meeting the below criteria began on June 16, 2008:

    - Are currently in H-1B nonimmigrant status;
    - Will reach the end of their 6th year of their H-1B nonimmigrant stay in 60 days;
    - Are only eligible for a further H-1B extension under AC21 §104(c)2 upon approval of their Form I-140 petition; and
    - Are ineligible to extend their H-1B status under AC21 §106(a)3.

    USCIS expects that adding other classifications to Premium Processing Service at this time would exceed USCIS' capacity to provide timely Premium Process Service. USCIS will continue to evaluate whether it is able to process other groups of cases beyond this limited classification of petitions and will provide notification of any further availability of Premium Processing Service for Form I-140.

    The link to the USCIS Fact Sheet is:
    http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=7e3355fe4a37a110VgnVCM1000004718190aRCRD&vgnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD

15. **Question:** Although USCIS has been publishing annual immigrant visa number usage in its annual report, what steps could USCIS take to made such data and statistics available more frequently, either monthly or quarterly, to increase the transparency of the I-485 process?

    Response: The USCIS annual report only identified that USCIS had successfully processed all employment based applications to utilize the allotted worldwide employment-based visas during FY2007. The actual accounting of visas usage is managed by the DOS**.**

16. **Question:** Although FIFO is the proclaimed order of processing at USCIS, there has been many observations on I-485 adjudication where people with later receipt date and priority date are approved ahead of others from the same country with earlier receipt date and priority date, especially at TSC. The delayed processing of I-485 cases with earlier priority dates is not only unfair to those petitioners, but also causes significant future visa bulletin retrogression given the large number of pending cases with earlier priority dates having not been adjudicated. What procedure or guideline by USCIS is in place to ensure FIFO in I-485 adjudication, and what additional measure USCIS can take to address the issue?

    Response: FIFO is the order of processing at USCIS whenever possible. Cases filed with the same priority date may be adjudicated on different dates due to a myriad of reasons including incomplete documentation in the file or security check issues. The Nebraska and Texas Service Center work diligently to ensure that all cases that can be adjudicated are adjudicated. FIFO is the standard of processing. However, visa availability, security checks clearances, and evidentiary concerns can cause cases to progress at different speeds.

17. **Question:** What actions would USCIS and DOS take when the pace of approval for I-485 cases in certain category and/or from a certain country turns out to be faster than expected and is going to cause the visa number usage by that country or category exceeds the annual limit in the middle of a month? What preventative measures could USCIS and DOS take in preventing such instances from happening?

    What actions would USCIS and DOS take when a country has not reached the limit set on the number of immigration visas could be given to petitioners from that country, but could not get more visas because the worldwide visa numbers for that category has been exhausted, due to the fact that the pace of approval for I-485 cases from other countries is faster than the pace of approval for those from that country in the same category? What preventative measures could USCIS and DOS take in preventing such instances from happening?

    Response: USCIS works diligently with Department of State (DOS) to ensure that all viable cases with visa numbers available are adjudicated. USCIS and DOS work together on inventories per preference within the constraints set by Congress. Country limits are set by law via Congressional mandates. Year end decisions on when to allocate visas world wide to countries that have exceeded their limits are made by the DOS.

18. **Question:** There are I-140 and I-485 cases that were originally filed TSC, then transferred to VSC, then transferred back to TSC 3 months later. As a result of the transfer, the original receipt date was replaced with the date of last transfer which is 3 months behind. This causes such cases behind the current processing dates at TSC. What could TSC do to pull those cases forward in the line of cases waiting for processing to correct the problem?

    Response: Cases should always retain their original receipt date. If you are aware of cases that lost that date because of work flow transfers, please let us know so we can correct the problem.

19. **Question**: Can USCIS comment on the status of the development of regulations for the adjustment of status to lawful permanent residents of T and U visa holders?

Response: The rule has been drafted and was submitted to the White House Office of Management and Budget on 8/15/08 and is currently undergoing the Executive order 12866 review at OMB. We have responded to one set of comments from other Executive Branch agencies and OMB and we are expecting another set of comments from OMB. OMB has until 11/15/08 to complete their review. The status of the OMB review can be monitored at http://www.reginfo.gov/public/do/eoPackageMain.

20. **Question:** We have heard from our clients that officers in the Call Centers are telling people to wait thirty days beyond the processing times listed on the website before they will issue a service request. Is this a national policy?

Response: Currently SRMT (Service Request Management Tool) will not allow a service request to be taken until 30 days have elapsed from the processing time listed on the website. This is being addressed in our next system update which is tentatively scheduled to be released in mid November. Once this update is completed, we will be able to take a request one day after the listed processing date.