issues of reuniting foreign national and U.S. citizen spouses?

Comments and Questions From CIS Ombudsman's Teleconference: "How is USCIS Working For You?" on February 20, 2008 Comments

- 1. National Benefits Center -- The caller noted that overall the National Benefits Center is processing family based cases well. She also noted that the staff is processing requests for evidence quickly so that customers can fix errors in a short timeframe.
- 2. National Customer Service Center (1-800 Line) Several callers indicated concerns with USCIS' National Customer Service Center (1-800-375-5283). Although the customer representatives are pleasant and courteous, they do not have access to the proper information and provide incorrect information at times.
- 3. Information Provided to the Public A caller described her concern with incorrect and old information provided to I-130 applicants at the Charlotte office.
- 4. Requests for Evidence for Premium Processed Cases One caller mentioned concern that for premium processed cases, additional requests for evidence for information already provided are issued on the 15th day when a decision is due.
- 5. Continued Receipting Problems Callers mentioned problems that continue as a result of USCIS' receipting delay this summer such as incorrect receipt dates on notices and improper rejections for correct fee amounts.

Ombudsman Response We first suggest that you review USCIS' Frequently Asked Questions on these issues to see if your issue is covered. Next, please try calling USCIS' National Customer Service Center (1-800-375-5283) and ask the call representative to issue a "service request" to research your case. If you have any trouble on the call, please record the name or ID of the representative as well as the date and time of the call and email our office at cisombudsman.publicaffairs@dhs.gov. You may also ask us to research the specifics of your case by using DHS Form 7001 at www.dhs.gov/cisombudsman. For privacy reasons, we require written consent before we can research a case.

Questions

- **1. New York Infopass Appointments** A caller described appearing for Infopass appointments at the Federal Plaza location where the officers tell him to go to the Garden City location. When he goes to Garden City, they tell him to go to Federal Plaza. This is a problem the Ombudsman's office has heard previously. Can USCIS help explain why this might be happening and how it will be fixed?
 - USCIS Response on April 15, 2008: The Garden City office and the New York office are aware of the
 situation and have taken steps to resolve the issue by improving the flow of communication between
 the two offices. Garden City does take walk-in inquiries; however, if an applicant wants to schedule an
 InfoPass appointment, he or she will be required to travel to New York City. The Information Unit for the
 New York District Office can utilize USCIS systems to check the status of cases which are pending in
 Garden City.

Garden City has also established an SIIO Point of Contact. So, if necessary, the New York Information Unit can communicate directly with Garden City when clarification or further assistance is needed.

Some customers have expressed frustration at receiving varying verbal responses when they approach USCIS for information on the status of their cases. In an effort to better serve the public, the New York City District Director established an Information Handout. The Information Handout, which the New York Information Unit began issuing in March of this year, provides the public with written responses to their inquiries. It also provides customers with an official record of the services provided by the New York Information Unit.

2. Naturalization Applications (N-400s) Status Information? – A caller asked how to determine the status of an N-400 application. The caller could not obtain the information from the National Customer Service Center, an Infopass appointment, or by looking at the USCIS website. Can you please explain how to get this

information?

- USCIS Response on April 15, 2008: USCIS recommends that the customer first check the posted N-400 processing times for the office having jurisdiction over the pending application. If the application is outside of the posted processing time, the customer may inquire on the status of the case with the National Customer Service Center at 1-800-375-5283. In certain situations, the National Customer Service Center may refer the customer to the Field Office by advising that they make an InfoPass appointment in order to speak directly with an Immigration Information Officer. The customer should note that a case may be pending for a variety of reasons, including an outstanding FBI Name Check.
- **3. Will USCIS Use First In First Out Under the New FBI Name Check Memo?** In light of USCIS' revised policy for FBI name checks for green card applications and selected other applications, the caller asked whether USCIS will use a first in first out approach to process cases delayed by more than 180 days by the FBI name check?
 - **USCIS Response on April 15, 2008:** Each USCIS office is responsible for determining the most efficient way to process cases within its jurisdiction. While the recent policy modification may help USCIS process some cases immediately, customers should note that other factors (e.g. visa availability, fingerprint clearance) may contribute to a delay in final adjudication of the application.
 - Customers should contact the National Customer Service Center at 1-800-375-5283 if 1) their case is outside of the posted processing dates, 2) they have previously been informed that their case was pending due to an FBI Name Check, and 3) it has been more than 180 days since the date of filing.
- **4. How Does USCIS Calculate Posted Processing Times?** A caller noted that there are cases still pending that are beyond the USCIS posted processing times. Can USCIS explain why that might be and the agency's current efforts to speed up processing times?
 - USCIS Response on April 15, 2008: Processing times, which are regularly updated on the USCIS
 website, are an estimate of how long it will take to complete a case. Each case is different, and some
 cases may take longer to process because of unique fact patterns, documentary requirements, or other
 requirements.
 - USCIS received a significant increase in the number of applications filed for this past fiscal year. In July and August of 2007, USCIS received nearly 2.5 million applications and petitions. This compares with 1.2 million applications and petitions received in the same time period for 2006. As a result, average processing times for certain application types filed after June 1, 2007, have become longer.
 - With the surge in applications, USCIS was initially tasked with eliminating the receipting delay. Since that goal has been met, USCIS is now devoting its resources to improving the processing times. Offices are adding new employees (approximately 1,500 nationwide) and are also increasing the number of shifts in an effort to reduce the backlog as quickly as possible.
- **5. Unprofessional Employees** A caller described a visit to a local office where the Immigration Information Officers were talking about her thinking she did not speak Spanish, but she did. What steps can a customer take to file a complaint with USCIS, in addition to contacting the Ombudsman? Is there any follow-up after the complaint is filed?
 - USCIS Response on April 15, 2008: Customers who are aware of, or who have been exposed to, inappropriate behavior or misconduct by any USCIS employee should contact the National Customer Service Center at 1-800-375-5283. All complaints will be forwarded through proper channels for any follow-up action deemed appropriate. A complainant may be contacted depending on investigative need.
- **6. A-Number Access?** Another caller asked why USCIS does not provide public access to case information using A-numbers. Is that something USCIS is planning to do in the future?

- USCIS Response on April 15, 2008: Case status inquiries are driven by receipt numbers rather than alien registration (A-) numbers since any given customer may have multiple applications or petitions pending under his or her A- number. For this reason, a receipt number for the particular application or petition at issue is the most efficient way of accessing status or other relevant information.
- **7. G-28 Attorney Representation Notice On File with USCIS; No Notice to Attorney** The caller mentioned that the client's travel authorization was approved, but was not sent to the attorney even though a G-28 attorney representative notice was on file with USCIS. The Ombudsman's office has heard this complaint on visits throughout the country. Can you please explain why an attorney may not receive notification and how s/he can fix this problem?
 - **USCIS Response on April 15, 2008:** USCIS suggests that the caller first verify that the G-28 has been completed and signed properly, and that it includes correct address information. If a notice of representation is submitted but not properly signed, the application or petition will be processed as if the notice had not been submitted. See Title 8 C.F.R § 103.2.
- 8. Can Students on an F1 Visa Apply for an H1B Visa After Submitting An Adjustment of Status Application? Prior to the teleconference, the Ombudsman's office received this question which was not addressed during the call. Specifically, can a student with an F1 student status who has submitted an adjustment of status application with Form I-485 apply for an H1B visa without nullifying the I-485 application?
 - USCIS Response on April 15, 2008: An applicant in valid F-1 status may file a Form I-129 petition to change his/her status to that of an H-1B during the pendency of an I-485 Application to Adjust Status.

Advance Questions

- **1. H-1B & I-485** Foreign nationals who were on student (F1) visa when they submitted their 485 application now use EAD or Advance Parole based on their I-485 application. Can these individuals apply for H1B visa and, if so, will applying for the H1B visa nullify their I-485 application? This is an issue as the April deadline for H1Bs approaches.
 - USCIS Response on April 15, 2008: There are no detrimental consequences if the customer with F-1 status files a Form I-129 nonimmigrant petition to change his/her status to H-1B during the pendency of an I-485 Application to Adjust Status.
- 2. FBI Name Check Pending More Than 180 Days What can applicants do when their I-485 application has been delayed due to a pending FBI name check and it has been over 180 days since the application was filed?
 - USCIS Response on April 15, 2008: Customers should first check the posted processing time for the
 office having jurisdiction over the pending I-485 application by navigating to the "Processing Times"
 section of www.uscis.gov. If the application is past the posted processing time, customers who have
 been previously informed that their case is pending due to the FBI name check may inquire with the
 USCIS customer service line at 1-800-375-5283.
- **3. H-1B Visa Process** Is there a different process for issuing visas to H1-B applicants who are already in the United States, for example, individuals on an F-1 visa?
 - **USCIS Response on April 15, 2008:** It is possible to file for a change of status from F-1 to H-1B at any time that the cap has not been reached for a particular fiscal year, provided you:
 - o are in valid F-1 status.
 - o have met the requirements for a specialty occupation, and
 - o have satisfied the criteria for eligibility of H-1B status.

In order to receive a change of status to any category that requires an employer to submit a petition, the individual must be the beneficiary of a Form I-129, Petition for Nonimmigrant Worker, filed with the Service Center having jurisdiction over his or her residence. The Form I-129 serves both as the

employer's petition and the nonimmigrant's request for the new status. The new status is not effective until the change of status has been approved.

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