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Office of Public Engagement
United States Citizenship and Immigration Services
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Via e-mail: opefeedback@uscis.dhs.gov

Re: AILA Comments on USCIS Interim Policy Memo (PM-602-0043) Regarding Process for Responding to Requests by DOS to Accept a Locally Filed Form I-130

The American Immigration Lawyers Association (AILA) submits the following comments on the [USCIS Interim Policy Memorandum](#) (PM) for the process for responding to requests by the Department of State (DOS) to accept a locally filed Form I-130, Petition for Alien Relative; utilization of Reserved Section of the *Adjudicator's Field Manual* (AFM) – Chapter 21.12; AFM Update AD11-38 (AILA Doc. No. 11081020).¹

AILA is a voluntary bar association of more than 11,000 attorneys and law professors practicing, researching, and teaching in the field of immigration and nationality law. Our mission includes the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, U.S. permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws. We appreciate the opportunity to comment on this policy memorandum and believe that our members' collective experience provides expertise that makes us qualified to offer views that will benefit the public and the government.

Introduction

We thank USCIS for holding the August 10, 2011, [stakeholders call](#) on both the process changes for petitioners residing overseas and the Interim PM regarding the basis for an exceptional circumstance for DOS filing, as well as for the opportunity to ask questions and provide comments on the process changes (AILA Doc. No. 11080424).²

¹ USCIS Interim Memo on Requesting Expedited Local Processing of Form I-130, AILA Doc. No. 11081020, <http://www.aila.org/content/default.aspx?docid=36594>

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Concerns Relating to Interim Policy Memo

As [stated](#), effective [August 15, 2011](#), petitioners residing outside the U.S. in countries without USCIS offices will no longer be eligible to file Form I-130 with DOS nor have the option of filing at the USCIS overseas office in their jurisdiction (AILA Doc. Nos. 11081020 and 11051762).³ Instead, the petitioner will be required to file only with the USCIS Chicago Lockbox. Though petitioners residing in countries where a USCIS office is located will continue to have the option to file either with that office or domestically with the Lockbox, those residing in countries outside of this will have access to only the domestic filing option.

However, based on the Interim Policy Memorandum (“PM”), the USCIS may at times authorize the DOS to accept and adjudicate an I-130 petition. The PM lists six examples of circumstances in which it would consider authorizing local DOS adjudication. They include but are not limited to: certain military and medical emergencies; threats to personal safety; certain “aging out” cases; certain cases where petitioner has recently naturalized; and certain cases involving adoption of a child.

As explained previously, the processing time for the overseas filing of Form I-130 is significantly shorter than the time for processing through the Lockbox. This means that in most locations, a petitioner may have his immediate relative issued an immigrant visa within two to three months of filing an application. However, an immediate relative filing via the Lockbox may not result in an immigrant visa being issued for nine to twelve months. Therefore consequences are clear.

AILA is concerned about the impact of this rule on the numerous U.S. citizen petitioners on expatriate employment assignments abroad who are re-assigned to return to the U.S., normally with little notice. It is common that an expatriate employee has a few months notice or less of a decision to transfer him/her back to the U.S. In that circumstance and under current normal processing times, the U.S. citizen’s foreign spouse would not be able to return to the U.S. at the same time as the U.S. petitioner. The U.S. petitioner would then be forced to either endure up to a year of separation from the spouse (and potentially minor children as well) or terminate employment with the multinational employer if the petitioner cannot convince the employer of a significant delay in move date. This is an undue hardship to expatriate U.S. citizen employees, who may have little control over the schedule of multinational work assignments. Equally, a U.S. citizen who has been offered a job in the U.S. would be forced to choose between starting a job

² *USCIS Invitation to Teleconference on Form I-130 Process Changes*, AILA Doc. No. 11080424, <http://www.aila.org/content/default.aspx?docid=36521>

³ *USCIS Interim Memo on Requesting Expedited Local Processing of Form I-130*, AILA Doc. No. 11081020, <http://www.aila.org/content/default.aspx?docid=36594>; 76 FR 28303 (5/18/11), AILA Doc. No. 11051762, <http://www.aila.org/content/default.aspx?docid=35423>

without the spouse and children or losing the job offer altogether. For employers willing to accommodate family needs of their expatriated employees, lengthy I-130 processing times can interfere with business decisions, impacting competitiveness. The majority of employers would not wait 9-12 months for an employee to start (far beyond a notice period). The delay would put the U.S. citizen at a distinct disadvantage compared to a non-U.S. citizen who is eligible to apply (together with his/her dependents) for a nonimmigrant visa.

1. Comments Regarding “Exceptional Circumstances” Examples:

Therefore, AILA suggests that the PM clearly delineates the above situation as an example of an “exceptional circumstance.” AILA would add the following bullet point to the PM:

- *Multinational Expatriate Re-Assignment to U.S.:* A USC petitioner employee of a multinational company assigned outside the U.S., who is then re-assigned to work for the company (or subsidiary, etc) in the U.S., yet has been provided insufficient notice to process the I-130 of his/her dependents to ensure the re-assignment or move will be made together with the dependents.
- *Immediate start of new employment in the U.S.:* A USC petitioner who has been offered a job in the U.S. and is required to start work within the next 3 months.

2. Comments Regarding the USCIS Authorization Process:

According to the PM, the process in which to “apply” for authorization for DOS to accept and adjudicate an I-130 petition is somewhat indirect. It states:

If a consular officer in an embassy or consulate where USCIS is not present encounters an individual case that the officer believes requires immediate processing due to exceptional circumstances, the consular officer should contact the USCIS Field Office Director (FOD) with jurisdiction over that location to determine whether DOS may accept and adjudicate the case. [PM at 1-2](#) (AILA Doc. No. 11081020).⁴

Yet, the PM does not indicate how the applicant would bring such a case to the attention of a consular officer nor ensure the consistent evaluation of the “exceptional circumstance” criteria by a consular officer (a case which the consular officer “*believes* requires immediate processing...”). It appears that if a consular officer does not agree to

⁴ USCIS Interim Memo on Requesting Expedited Local Processing of Form I-130, AILA Doc. No. 11081020, <http://www.aila.org/content/default.aspx?docid=36594>

bring the case to the attention of USCIS, the petitioner has no option to have USCIS make that evaluation. As the ultimate decision of whether to authorize DOS to take such a case lies with the Field Office Director (FOD), it seems such requests should simply be sent directly to the appropriate FOD. This would ensure consistent evaluation of the “exceptional circumstances” criteria and remove one more step in an already time-sensitive situation.

3. Comments Regarding the Blanket Processing Authorization:

AILA applauds USCIS for including in this Interim PM a process by which USCIS may authorize blanket processing to DOS at an overseas location in response to a large scale crisis. However, AILA urges USCIS to use this authorization liberally and not wait until there is a significant humanitarian crisis before implementing such authorization. The comments above relating to the mechanism to initiate requests to DOS to take jurisdiction over I-130 petitions apply also in this instance.

Reiteration of Previous Important Comments:

Additionally, AILA would like to [reiterate its concern](#) over fairness of access to a beneficial procedure available in one country over another under the new rule (AILA Doc. No. 11071843).⁵ As the rule stands, it significantly benefits U.S. petitioners who reside in the handful of countries which have an overseas USCIS office. USCIS offices are only located in twenty-four countries out of 196 in the world. Therefore, U.S. petitioners who randomly happen to be assigned to one of those 24 countries benefit over the rest. The randomness of access to this significant benefit is not in keeping with notions of fairness and equal access to similarly qualified individuals.

AILA would like to reiterate its prior comment that there is an alternative policy that could be implemented that could alleviate some of the above concerns. Given that a significant reason for the change in the rule was to reduce the costs associated with delegation of the USCIS adjudication work to consular officers, it is clear that the task of overseas adjudication of Form I-130 should remain with the USCIS overseas offices in existence today. However, those U.S. petitioners who reside in a country without a USCIS office should still be able to file this petition with the USCIS sub-office having jurisdiction over their country of residence. Upon approval, that petition would then immediately be forwarded directly to the appropriate consular post for immigrant visa adjudication. This alternate procedure has the potential to both greatly shorten the time to immigrant visa issuance while offering equal access of overseas adjudication to all U.S. citizens residing abroad.

⁵ *AILA Comments on USCIS Changes to Overseas I-130 Filings*, AILA Doc. No. 11071843, <http://www.aila.org/content/default.aspx?docid=36242>

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Lastly, USCIS commented during the August 10th teleconference that the above suggestion may not be possible given that some USCIS offices abroad may not even accept applications by mail. AILA believes this should not be an impediment to sub-district filing described above, as all overseas offices and consular posts have long been able to designate a sole means by which filing can be posted. For example, several consular posts have long designated filings as only being possible via United Postal Service (UPS) or other private courier to ensure mailings are handled in a uniform efficient manner for that location, based on local postal conditions. Overseas USCIS offices could also restrict I-130 mailings to similar criteria.

Conclusion

AILA appreciates the opportunity to comment on this Interim Policy Memorandum, and we look forward to a continuing dialogue with USCIS on issues concerning this important matter.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION