

AILA- Nebraska Service Center Liaison Teleconference Q&As
June 25, 2009

NSC: Tom Barber, Jerry Heinauer, Steve Pollnow, Alice Weichert, Joan Hamm, Ginger Belzer, Rita Stranik

AILA

Diana Bauerle, Chair; Rob Cohen, Vice Chair; Jane Carroll, Lisa Duran, Susan Fortino; Loan Hunyh and Lynn Lee and Bob Deasy, AILA National Office

Opening Remarks:

Jerry Heinhauer reminded everyone about the announcement at the conference in Las Vegas that the NSC would have a new email box for the public and AILA members to follow up on calls to the National Customer Service Center. The NSC expects to have the new mail box in place shortly. When using the new email box, NSC prefers to have a separate email for each inquiry, although one family may be included in a single email.

AILA Note: Following the teleconference, the NSC announced that the address of the new mailbox is NCSCFollowup.Nsc@dhs.gov. For instructions on the use of this mailbox, see [AILA Document 09042870](#).

Currently card production for permanent resident cards is delayed. NSC anticipates getting back on schedule in approximately 3 weeks.

Note: NSC has been advised by the Corbin KY Card Production Facility that it has returned to full production capacity.

Backlogs in those product lines with backlogs remaining are being reduced. Currently NSC has 150 people pre-adjudicating 485s and expects to be aught up by August 1. They are moving adjudicators to other product lines as they have excess capacity in several areas. Because of the excess capacity, they will be accepting work from other service centers to assist with their backlogs as well.

Ability to Pay

1. The William Yates Memo of May 4, 2004 on Determination of Ability to Pay under 8 CFR 204.5 (g) (2) (HQOPRD 90/16, *posted on InfoNet at AILA Doc. # 04051262*) directs adjudicators that an employer has met its burden to demonstrate ability to pay if the employer submits credible, verifiable evidence that the petitioner is employing the beneficiary and has paid or is currently paying the proffered wage.

Members report receiving RFE's on the employer's ability to pay the proffered wage on EB-2/EB-3 I-140 petitions based on an approved labor certification in situations where W-2

statements of the employee are submitted to establish that the employee has been paid the proffered wage, or in excess of the proffered wage, from the date of filing the labor certification onward. In situations where the employee only worked for part of the year in which the labor certification was filed, or where an employee worked for the entire year in which the labor certification was filed, but the employee's salary was raised in the course of the year to the proffered wage, the W-2 form, on its face, would not show that the employee was paid the proffered wage. If pro-rated, the W-2 would show that the employee was paid the proffered wage, or in excess of it, for the year in which the labor certification was filed. The RFE's in these instances state that the employer has not shown the ability to pay.

Will the NSC accept documentation that establishes the beneficiary was employed for only a part of the year, and received the proffered wage for that portion of the year after which the labor certification was filed?

Answer: In general, the W-2 is adequate evidence for demonstrating that the alien was paid the proffered wage and the employer has the ability to pay. However, if the alien was paid wages for only a part of the year additional evidence should be submitted to demonstrate the start date of employment, such as pay stubs or an employment contract, or any other credible evidence that would show the partial employment for the year. If the period of employment during the first year is too short, (i.e. start date in December) the employer may be requested to provide additional evidence for ability to pay for that year.

Transfer Of Adjustment Applications To Unrelated Locations

2. AILA NSC Liaison has fielded several inquiries where adjustment application files have been sent to a district office which is unrelated to the applicant's residence or location in the applicant's biographic history. AILA has speculated that the only connection to the location might be something as tangential as the last admission at the port in the location where the file was transferred. Why would this kind of transfer occur? What procedures can attorneys follow to request that the local CIS office transfer the file back to the NSC for adjudication?

Answer: If adjudicators have questions about possible issues in an application, such as employment issues, marriage issues, or criminal issues, the NSC will refer the case to a local office for interview. These referrals are routed through the National Benefits Center (NBC) for scheduling at a local office. The NBC handles all of the scheduling and coordinates with the local offices. When files go astray, questions or inquiries should be directed through the NBC liaison or through the local office liaison.

Checking Database For Updated Address Before Sending RFE

3. Members report receiving RFEs for employment-based I-485s, where the I-485 has been pending for many months, if not years. In the interim, the attorney representation might have changed, or addresses for the applicants or the attorney might have changed. These address changes are updated through calling the NCSC and/or electronically filing an AR-11. Because these RFEs often have a 30 day response time, it is important that they are sent to the updated address. One member reported that her client changed address, and in addition, her client

stopped using her former attorney. An RFE was sent to the old attorney, and also to the client's old address. The former attorney sent the RFE to the client, losing about 10 days in the process. The RFE sent to the client's old address was eventually forwarded by the post office to the client, but again, about 10 days were lost in the process. The client only contacted the new attorney after receiving the RFE, so the new attorney could not have had a G-28 on file before this point. The new attorney was able to respond, but with only 1 day to spare. The filing of an AR-11 in this situation did not help, because either the system was not updated with the new information, or the adjudicating officer at the NSC did not check for an updated database in the system before issuing the RFE. Could adjudicating officers please be reminded to check the appropriate system for address updates before issuing? In the alternative (or in addition) could a longer lead time on RFE responses be provided to account for the mail delivery issues on long pending applications?

Answers: Officers don't check the multiple databases for address changes. NSC operates under the assumption that when an electronic AR-11 is filed, the address change is updated in CLAIMS, but this might not be the case. When an officer at the NSC opens a case and there is a new G-28, the officer assumes that the address has been updated in the system. NSC cautions that applicants and attorneys file timely address changes. Attorneys assume that if they've updated through NCSC, that change is updated throughout the system, but that might not be the case. If AILA notices that this continues to be a problem, the matter should be raised with HQ. The attorney should keep record of the update, with receipt number, to provide evidence to NSC that they did the update through NCSC. Attorneys should also note that if there are multiple applications associated with a file, such as a pending I-485 with I-765, and I-131, an address change on one application will not change the address for all applications. Each and every application will have to be updated through the NCSC. This also applies to family members and each of their pending applications. However, any address changes sent to the NSC change of address box are handled in a timely fashion.

Documentation in Support of I-140 Petitions

4. At the annual conference, there was discussion about the Service Center's preference for the submission of documentation in support of I-140 petitions, particularly for Extraordinary Aliens in the Arts & Sciences, Outstanding Researchers and Professors, or national interest waiver cases.

- Please confirm that NSC does not accept documentation in electronic format such as flash drivers or CD-Rom, but nevertheless prefers copies of entire published articles and not just the first page.

Answer: NSC can not accept documentation in electronic format for security reasons. Title pages or the first page with the title, author and publication data are sufficient, the entire article is not required. If the article cites the beneficiary's work, the citation should be included and highlighted to make it easier for the examiner to find the reference.

Printouts from services such as SciFinder, PubMed, Google Scholar, are useful and will be accepted. The relevant parts of the listed articles citing the works should be included. NSC is

looking for independent citations and does not give additional credibility to authors who cite their own works.

- With respect to additional documentation, does NSC find the CV of authors of supporting letters valuable (recognizing that often the CV can be 20 pages or more)?

Answer: No, this is not required. NSC also notes however, that these supporting letters alone are not sufficient to establish extraordinary ability. They may be helpful to understand the nature of the beneficiary's accomplishments or research, but the letters alone do not establish the necessary qualifications.

- Is there a preferred order to submitted documentation, or is it sufficient to include an index?

Answer: No particular order is required but an index and tabs make it easier. Tabs should be placed at the bottom. Examiners find it helpful if the evidence follows the regulations and criteria. Unpublished manuscripts are not considered important. USCIS will post an I-140 FAQ shortly.

AILA note: These FAQ's have now been posted and can be found at AILA Doc. No. 09062660.

Processing Form I-824 for Following to Join Derivatives

5. If the principal applicant applies to adjust status while the derivative will be consular processing, will NSC accept Form I-824 concurrently with the I-485, or should counsel wait until the I-485 is approved before submitting Form I-824?

Answer: The I-824 can be filed concurrently, or filed later. It is easier for NSC if they filed concurrently as the files will consolidated. If it is filed later, it is harder to match the I-824 to the principal file. If you have to search for the file, there is a always a greater chance of a problem.

Next call: July 23, 2009, Refugee and Asylee issues.