



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

March 11, 2016

The Honorable León Rodríguez
Director, U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Ave., NW
Washington, D.C. 20529

Re: USCIS Processing Times on Applications and Petitions for Immigration Benefits

Dear Director Rodríguez,

The American Immigration Lawyers Association (AILA) remains troubled by backlogs in processing applications and petitions for immigration benefits, as well as with what appears to be a lack of transparency in communicating with the public regarding these issues. In recent months, we have observed excessive adjudication times for a number of important benefits, including work authorization applications; temporary visas for artists, entertainers, and athletes; young adults renewing their DACA benefits; and extension/change of status petitions for specialty occupation (H-1B) workers.

Adjudication backlogs are more than just an inconvenience. In many cases, they have serious, far-reaching repercussions on the lives of individuals and for U.S. businesses. As a result of these delays, applicants and beneficiaries have lost jobs, have been forced to delay the commencement of educational programs, and have been unable to travel to attend important family and business events abroad. Many have not been able to renew their driver's licenses, making it difficult to get to work and take care of their families. Businesses have lost valuable employees and contract opportunities and have had to expend considerable resources to hire and train replacements. Compounding matters and further frustrating stakeholders is the lack of accurate published data regarding current processing times, which creates unnecessary obstacles when contacting the USCIS National Customer Service Center (NCSC) to check on the status of a case.

Though AILA and other stakeholders have raised these concerns on a number of occasions, USCIS has failed to provide an adequate explanation as to how or why these problems develop or to describe how it plans to resolve the backlogs, and when the public can expect to see processing times return to normal. USCIS has also been unable to explain why stakeholders continue to be told by NCSC representatives that the published processing times are not accurate, nor has it articulated a plan to publish regular, timely, and accurate data in the near future. USCIS must take immediate action to avoid further harm to petitioners, applicants, and beneficiaries alike, including allocating more resources to time-sensitive benefits applications and prioritizing the dissemination of accurate processing times.

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Prolonged USCIS Backlogs Are a Recurring Problem

Unfortunately, lengthy processing times and backlogs are not rare. In recent months, there have been consistent delays across multiple product lines, including benefits applications that are exceptionally time-sensitive. For example, currently, petitions to extend H-1B status are severely backlogged at both the California Service Center (CSC) and the Vermont Service Center (VSC). As illustrated by the chart below, over the past four months, the CSC has not moved the processing date for H-1B extensions more than three weeks. According to the posted processing times, as of September 30, 2015 (posted on November 17, 2015), CSC was processing routine H-1B extensions that were filed on or before June 2, 2015. By November 30, 2015, the processing date had moved only 11 days – to June 13, 2015. The latest data, as of December 31, 2015 shows that the CSC is processing H-1B extension petitions filed on or before June 25. The Vermont Service Center reports similar backlogs—from September 30, 2015 to December 31, 2015, the H-1B extension processing date has moved only three weeks. Many of the H-1B beneficiaries stuck in the backlog have reached or will soon become dangerously close to the end of the automatic 240-day extension of employment authorization as provided by 8 CFR §274a.12(b)(2), and are at risk of losing their jobs. Many AILA members have filed upgrades to premium processing solely to avoid lapses in clients’ work authorization and status.

Date of Publication	Processing Times “As of”	CSC H-1B Extension of Status	VSC H-1B Extension of Status
11/17/15	9/30/15	6/2/15	5/25/15
12/15/15	10/31/15	6/3/15	6/1/15
12/22/15	10/31/15	6/10/15	6/1/15
1/12/16	11/30/15	6/13/15	6/8/15
2/11/16	12/31/15	6/25/15	6/15/15

Nonimmigrant petitions for the O and P classifications have also been backlogged since at least the summer of 2015. According to the posted processing times, summarized in the chart below, on June 30, 2015, VSC was processing petitions filed on or before June 8, 2015. As of September 30, 2015, processing times moved only 21 days – to June 29, 2015, thus three months for adjudication. The most recent processing time report indicates that VSC is still taking almost two months to process O and P petitions. Although the report for the CSC shows processing for O and P petitions is only two weeks, in practice, members consistently report that both the VSC and CSC are taking approximately eight to ten weeks to adjudicate O and P petitions. Many O and P nonimmigrants are artists and entertainers who must travel to the United States in accordance with strict event schedules at the risk of significant loss of contract revenues for the petitioner. Though O and P petitions can be filed as far as one year in advance of the date of need, many performances and appearances are booked only a few weeks in advance. Moreover, INA §214(c)(6)(D) suggests that USCIS should adjudicate these petitions within 14 days. The situation has become so unpredictable, more and more members report having to upgrade to premium processing in order to ensure timely approval of the petition.

Date of Publication	Processing Times “As of”	CSC O & P Petitions	VSC O & P Petitions
8/31/15	6/30/15	2 Weeks	6/8/15
9/14/15	7/31/15	2 Weeks	7/6/15
9/22/15	7/31/15	2 Weeks	7/6/15
10/15/15	8/31/15	2 Weeks	2 Weeks
11/17/15	9/30/15	2 Weeks	6/29/15
12/15/15	10/31/15	2 Weeks	8/31/15
12/22/15	10/31/15	2 Weeks	8/31/15
1/12/16	11/30/15	2 Weeks	9/22/15
2/11/16	12/31/15	2 Weeks	11/9/15

Applications for employment authorization are particularly problematic, and the issue of lengthy delays has risen to the level of systemic on a number of occasions over the past few years. Under 8 CFR §274a.13(d), USCIS is required to either adjudicate applications for employment authorization documents (EADs) within 90 days (with certain exceptions) or issue interim employment authorization. Unfortunately, USCIS often takes longer than 90 days to process EAD applications and, in practice, stopped issuing interim work authorization years ago. Applicants whose EAD applications remain pending past 90 days are unable to work and lose access to some ancillary benefits like driver’s licenses and employer-provided health insurance.

While AILA has observed processing issues across all EAD eligibility categories in the past, members currently report that EAD applications filed by asylum applicants under the (c)(8) eligibility category are significantly delayed.¹ According to the posted processing times, VSC made no progress processing (c)(8) EAD applications from August 2015 through October 2015. The processing date moved only 7 days the following month: in October, VSC was processing applications filed on or before July 13, 2015 and in November, the processing date moved to July 20, 2015. On December 29, 2015, USCIS posted an announcement that it was transferring certain product lines from the VSC to the CSC and the Nebraska Service Center (NSC) in an effort to balance workloads.

Date of Publication	Processing Times “As of”	VSC: Form I-765, based on a pending asylum application [(c)(8)]
9/22/15	7/31/15	1 month
10/15/15	8/31/15	7/13/15
11/17/15	9/30/15	7/13/15
12/22/15	10/31/15	7/13/15
1/12/16	11/30/15	7/20/15
2/11/16	12/31/15	8/24/15

¹ Note that initial EAD applications may be filed by asylum applicants 150 days or more after the asylum application was submitted to DHS, and USCIS is required adjudicate initial EADs in 30 days. See 8 CFR §208.7(a)(1). Renewal asylum EADs must be adjudicated in 90 days. See 8 CFR §274a.13(d); 8 CFR §208.7(d).

Backlogged adjudications of Forms I-539, Application to Extend/Change Nonimmigrant Status have also become extremely problematic, particularly for applicants seeking to change status to F or M student status. Aspiring students have been forced to defer their education programs by a semester or more, and must expend scarce resources rearranging travel schedules and course loads. According to the posted processing times, VSC made no progress between August 31, 2015 and October 31, 2015 on I-539 processing for applicants seeking a change of status to the F or M academic or vocational student categories. Processing times for that category is still approximately one year as of the writing of this letter.

Date of Publication	Processing Times “As of”	VSC: Form I-539, Change status to F or M	CSC: Form I-539, Change status to F or M
7/2/15	4/30/15	9/29/14	2.5 months
8/19/15	6/30/15	2.5 months	2.5 months
9/22/15	7/31/15	11/24/14	2.5 months
10/15/15	8/31/15	12/1/14	2.5 months
11/17/15	9/30/15	12/1/14	2.5 months
12/22/15	10/31/15	12/1/14	2.5 months
1/12/16	11/30/15	12/29/14	2.5 months
2/11/16	12/31/15	1/12/15	2.5 months

Unfortunately, USCIS is often slow to react to stakeholder reports of backlogs. In the fall of 2014, very soon after USCIS began adjudicating DACA renewals, AILA received reports of applications pending beyond the 90-day processing time that was initially announced by USCIS. Along with a number of other organizations, AILA collected examples and raised the issue immediately, flagging the consequences that were arising as result of the delays in a December 2014 letter to USCIS.² Despite this, advocates continued to hear story after story of DACA recipients who lost their jobs because of delays in approving renewal applications. After significant pressure from stakeholders and the CIS Ombudsman’s Office, USCIS eventually extended the processing times to 120 days, encouraged renewal applicants to apply earlier, allowed applicants to place a service request with NCSC, and started tracking and expediting applications where the original EAD was about to expire.

Prolonged Processing Times Create Significant Hardships for Individuals and Employers

While we understand that USCIS must balance many competing priorities and must often operate under resource constraints, adjudication delays have major impacts on the lives of applicants, petitioners, and beneficiaries, and in the employment-based context, on employer petitioners. For example, the University of Wyoming recently informed AILA that it was forced to upgrade ten of the 28 H-1B petitions that it filed in 2015, resulting in the expenditure of an

² See *Letter to Director Rodriguez on DACA Renewal Processing Times*, AILA Doc. No. 15011441 (December 12, 2014), available at <http://www.aila.org/advo-media/aila-correspondence/2014/letter-to-director-rodriguez-on-daca-renewal>.

additional \$12,250 in a year when the publically-funded University faced budget cuts.³ In each case, the applications were filed well in advance of the normal processing times, and the premium processing upgrade was required so that the beneficiary could start the academic year on-time or avoid falling out of status. The beneficiaries are employed in a wide variety of disciplines: from teaching music and political science to researching chemical microchips and oil recovery techniques.

John's⁴ H-1B extension was filed on June 24, 2015. As a result of the delays, a premium processing upgrade was filed so that John could travel to see his family over the holidays. Though he planned a trip home every year, this trip was particularly special as his baby daughter was turning one year old and she was going to meet relatives for the first time. John and his family waited a long time to book their flights given the uncertainty with his petition and their derivative applications, and ended up spending a lot more money than they would have if things had been approved in a timely manner.

On November 18, 2015, a Form I-129 was filed on behalf of Jane,⁵ requesting a change of status from F-1 to H-1B so that she could work at a nonprofit university with a limited budget. The University started the H-1B process well in advance of her OPT expiration in order to avoid paying premium processing fees. Jane gave birth to her first child, a boy, on January 20, 2016, and the family needed to move out of their small rental apartment to have enough room for their new baby. They put an offer in on a house that is closer to the University and paid a non-refundable deposit. Unfortunately, the mortgage company wouldn't approve her loan until she could show evidence of long-term work authorization and only gave her until April to provide that evidence. Jane was forced to upgrade to premium processing, instead of spending the money on baby necessities, furnishings for their new home, or paying for the baby's grandparents to come visit.

Ana is one of the first DACA recipients, having been granted deferred action just weeks after DACA was announced in the summer of 2012. She is married to a U.S. citizen and has a pending I-130, Petition for Alien Relative and adjustment of status application that was filed in June 2015. Ana worked her way through college to pay her tuition and will graduate with honors from the C.T. Bauer College of Business at the University of Houston this spring. In her free time, she volunteers with Catholic Charities leading DACA workshops. She was accepted to the University of Houston Law Center (UHLC), and wants to focus on immigration law. However, she has been unable to apply for the student loans and scholarships she needs, because her adjustment of status application has stalled and she is not yet an LPR.

Unreliable Processing Time Data Exacerbates the Problem

The lack of reliable data in the processing time reports that USCIS publishes aggravates the problems caused by adjudication backlogs. First, it appears that for at least some product lines,

³ Facing a revenue shortfall, the State of Wyoming is proposing a \$5 million dollar cut in the funding provided to the University of Wyoming. <http://www.uwyo.edu/uw/news/2015/12/governors-budget-recommendations-include-uw-initiatives.html>.

⁴ Pseudonym.

⁵ Pseudonym.

the processing time reports do not accurately reflect the actual processing times. For example, the published processing times for CSC currently show that O and P petitions are being processed in two weeks despite members reports that these petitions are taking between 8 and 10 weeks to adjudicate. While the backlogs are obvious to those who file O and P visa petitions regularly, they would not be obvious to applicants or attorneys who have not recently filed such a petition, thus preventing them from planning ahead for a lengthy adjudication time. Moreover, with a 45 to 60 day lag time, by the time processing times are published, they are already out of date. For example, a processing time chart published on February 11, 2016 contains data “as of” December 31, 2015, and a processing time chart published on July 27, 2015 contains data “as of” May 31, 2015. Priorities and workloads can shift substantially between the time the data is gathered and the time that it is published, making it difficult to know whether the posted processing times have any relevance to applications that are currently pending.

Second, it appears that the data contained in the processing time reports posted by USCIS is different from the data NCSC operators use to determine whether to accept a “service request” on a case that is past the posted processing times. AILA has raised this issue with USCIS on a number of occasions and while USCIS maintains that the data is the same, AILA members consistently report being told by NCSC representatives that the online processing times are not accurate, and that the “actual” processing times are different. In September 2015, AILA submitted to USCIS more than 20 examples of member reports illustrating this issue. Those examples included:

- “I was told the processing times on the Internet are ignored if the ‘actual’ filing date of cases being processed was a different date. I was given the ‘actual’ filing date of cases being processed (which was helpful)...”
- “[The NCSC operator] started to initiate [the] SRMT when she saw that over two months had passed since the filing date, but then she told me that her processing times were showing that the CSC was not yet at our filing date of 5/27/2015. She told me to wait 11 more days before calling back to inquire. Also, I had tried to submit e-Requests on 7/28, 7/30, 8/3, 8/4, 8/5, 8/7, and 8/10, but the inquiry could not be created as case was still ‘currently within the posted processing times.’”
- “[I was told that] in spite of the published processing times, CSC had not yet reached cases received April 1st. In fact, NCSC advised that CSC was working on I-131s filed January 21, 2015.”
- “[I was told that] despite the published processing time of 2 weeks for I-129 O-1 petitions at the Vermont Service Center, the VSC was currently working on O-1 requests filed on June 8, 2015. Because my case was filed on July 10, 2015, it was within the standard processing times and nothing further could be done. “

The apparent disconnect between the data contained in the published processing time reports and the data referenced by the NCSC causes a ripple effect; if the case is not outside of the processing times NCSC references, the NCSC operator will refuse to take a service request. Without a service request, there is no way for applicants or attorneys to bring long-pending cases to the attention of USCIS, to know if their case has been lost, or to find out if a document has been issued but not received. Overall, the lack of accurate published processing times makes it

difficult for applicants to make work, travel, or personal plans. In addition, AILA members spend countless hours on the phone with their clients explaining that the online processing times are inaccurate, attempting to set realistic expectations as to when a case might be adjudicated, and explaining why they are actually unable to submit service requests to follow up on the case. Additionally, with the proliferation of immigration-related chat rooms and message boards, affected individuals share their frustrations in online discussions, which creates panic among those who are planning to travel even months in the future. For example, one member received a call at the end of February from a client who plans to travel in July 2016. Though the petition filed on his behalf had been pending for 4 months, he was concerned that it would not be adjudicated before he needed to travel. With the cost of airline tickets becoming more and more expensive the closer to the travel date, this becomes a matter of significant expense.

Lastly, USCIS does not post processing times at all for certain types of applications. For example, there are no published processing times for E-3 applications, applications and petitions returned to USCIS from the consulate, Forms I-601 that are adjudicated at the local office, or Forms I-290B. In response to stakeholder requests, Forms I-129F and I-821D renewals, which were previously excluded from the processing time reports were eventually added.

Conclusion

Though we have raised these issues in a number of forums over the past several months, the posted processing times belie the suggestion that anything has been accomplished to solve the backlogs, while the lack of transparency has exacerbated a very difficult situation for our members and their clients. Stakeholders are concerned that the lack of transparency reflects a lack of planning on the part of the USCIS. On April 1, 2016, an additional 85,000 petitions for H-1B status will be added to the processing queue, and the backlogs will only increase. Given the gravity of the situation and our repeated attempts to engage in a productive dialogue leading to real solutions, we respectfully request a meeting with you and your senior leadership team, within the next two weeks, to examine these issues in more detail and hear the agency's plan for moving forward. Employers and individuals are entitled to realistic and accurate processing times so that they can make appropriate plans and have reasonable expectations.

Thank you for your attention to this very critical matter. Should you have any questions or require additional information, please contact Betsy Lawrence, AILA Director of Liaison at blawrence@aila.org or (202) 507-7621.

Sincerely,



Ben Johnson, AILA Executive Director

cc: Maria M. Odom, Citizenship and Immigration Services Ombudsman