Office of Communications
U.S. Citizenship and Immigration Services
Community Relations

Question & Answer

February 26, 2008

USCIS NATIONAL STAKEHOLDER MEETING

Answers to National Stakeholder Questions

Note: The next stakeholder meeting will be held on March 25, 2008 at 2:00 pm

1. **Question:** We are very concerned about the unprecedented number of fee waiver rejections after the fee increase became effective in July 2007. Some of our affiliated agencies report that none of their requests for a fee waiver on behalf of their clients have been granted since then, even in such obvious cases when the applicant is homeless or a resident in a nursing home. Oftentimes, the check list attached to the rejection doesn't provide a case-specific explanation for the denial as all reasons have been checked off or the checked reason(s) has(ve) been clearly addressed and documented in the fee waiver request. We would like to know why this is happening and how this situation can be rectified.

   Response: Please provide specific examples where you think the waiver was rejected in error.

2. **Question:** This is relevant to the eligibility of Iraqi and Afghan Special Immigrants to apply for federal means tested public benefits including Food Stamps, TANF, Medicaid, SCHIP, and SSI, in the context of the Welfare Reform Law of 1996 (PRWORA) and the definition of "qualified alien" and the 5 year bar.

   (Note that this is a separate issue from the eligibility of Iraqi Special Immigrants for 8 months of benefits/services under Sec. 1244 of PL 110-181, and the eligibility of Afghan Special Immigrants for 6 months of benefits/services under Sec. 525 of PL 110-161.)

   a. Are Iraqi and Afghan Special Immigrants after their admission to the U.S., required to apply for adjustment of status or is it optional?

      Response: Approval of an I360 for someone in the US does not convey status. If the person wants to become a permanent resident based on the I-360 grant, they must apply for adjustment of status using an I485. USCIS does not currently accept concurrently filed I -360/485 packets. They must have an approved Form I-360 in order to file the Form I-485.

      Filing a Form I-485, of course, is not required if an Iraqi or Afghan translator or interpreter filed the Form I-360 while overseas and, upon approval of the Form I-360, obtained an immigrant visa. In this situation, the person acquires the status of having been lawfully admitted for permanent residence upon admission to the United States with an immigrant visa.

   b. If so, when must they file the I-485 application (may they apply for adjustment of status immediately or must they wait one (1) year)?

Response: They may file immediately after the I-360 is approved. They do not have to wait one year.

c. Please describe the process, including any forms that must be filed, that the spouse or unmarried child of an Iraqi Special Immigrant must follow to obtain their Special Immigrant Visa. Also, please address the situation where the family members are still in Iraq, while the Iraqi Special Immigrant (Principal Applicant) is already in the U.S.

Response: If the derivatives of a translator appear with the I-360 beneficiary at the consulate they are able to obtain the same status as the beneficiary without any additional forms being submitted to USCIS. If they are not present when the translator consulate processes, and the translator provides the consular office with the names of any dependants and advises that they will be following to join, the consular office will maintain a copy of the DS-230 application. Once the derivatives are ready to get their visa, they must go to the consulate and they will obtain a visa without completing any additional forms.

If the principal fails to include the derivative information in the DS-230 application and the principal is already in the U.S. as an SI1, the principal will need to submit an I-824 to USCIS and request consulate notification. USCIS would then send a copy of the approved I-360 to the consulate. The derivatives would then be able to obtain a visa from the consulate.

d. Please address the process and forms for the situation where the Iraqi Special Immigrant (Principal Applicant) is in the U.S., and the family members are in the U.S. but do not have Special Immigrant status (they are parolees or some other non-immigrant status). What do the family members need to file to obtain Special Immigrant status?

Response: To obtain permanent residence, an SIV principal's the family members who are residing inside the United States must file their own Forms I-485. Since they must be either "accompanying" or "following to join" the principal, the family members should file the Form I-485 *at the same time* as the principal, or *after* the principal. The family members may not obtain adjustment of status *before* the principal.

3. **Question:** Please provide an update on the status of the Liberian refugee adjustment of status cases on hold. In the past, we were told that the hold was due to the fact that DHS was developing guidelines to screen for eligibility/admissibility in such cases? Please inform us of the status of those guidelines.

Response: FDNS has recently approved training guidelines for Service Centers to apply for screening for eligibility/admissibility in such cases. Service Center adjudicators will be trained under these new guidelines prior to transferring these files to the field for adjudication.

4. **Question:** We are concerned about are those cases in which a refugee parent is in the US and their minor child remains overseas. We have found that in several cases, refugees with children awaiting resettlement to the US have been processed faster than their child's application. When a refugee parent precedes the child to the US, one of the first steps the refugee will take upon arrival is to file an Affidavit of Relationship (AOR) for their child. We have seen cases in which the child's claim of fear of persecution is so intertwined with the refugee parent's claim that without that parent there to articulate the claim on their behalf, the child is failing to demonstrate to the satisfaction of a US Refugee Officer that s/he

qualifies for "refugee status." Due in part to the extremely slow processing of AORs, the AOR is screened off and the child is denied admission to the US resettlement program and the 2 year deadline for filing the I-730 has long passed.

We understand that applicants can argue that the "humanitarian reason" exception may be triggered after the 2-year deadline for filing I-730s has passed.

a. Would applicants be successful in arguing that the "humanitarian reason" exception may be triggered in a situation where the principal did not file because s/he was pursuing another benefit for which s/he believed the beneficiary to be eligible (the AOR)?

Response: Form I-730 filing requirements and 8 CFR 207.7(d) state a separate Form I–730 must be filed for each qualifying family member before February 28, 2000 or within 2 years of the refugee's admission to the US, whichever is later, unless the Service determines that the filing period should be extended for humanitarian reasons. Exceptions for humanitarian concerns are considered on a case by case basis. When service centers receive an I-730 that is beyond the two year filing period, then an officer will consider the totality of the circumstances such as the amount of time the application was filed beyond the two year period, the age of the applicant, and the living circumstances in the dependents country of residence.

We recommend that a person with an AOR pending, file an I-730 in case the AOR is not adjudicated timely. The service centers will consider a fee waiver on a case by case basis. Applicants may file both an AOR and an I-730 at the same time.

b. Will I-730 adjudicators accept the family verification work carried out by the AOR unit, thereby expediting the I-730 processing rather than starting over?

Response: I-730 adjudicators review all relevant materials in the A-file in order to establish eligibility. The AOR determination alone is not sufficient to establish eligibility. It may be considered along with other relevant documents for consideration of eligibility.

5. **Question:** We periodically have problems with filing I-730s for refugees who were admitted to the U.S. in a common law marriage relationship (such as from Colombia or Costa Rica), but then USCIS will not recognize their marriage for I-730 purposes, such as petitioning for step-children. Is it possible to make a waiver for the I-730 when the common law marriage was accepted for the initial entry of the refugees?

Response: To directly answer the question first, it is not possible for USCIS to create a waiver that would apply to I-730 applicants so that a marriage that was recognized during a refugee determination would continue to be recognized during any subsequent applications. USCIS does not have the statutory authority to allow for such a waiver, since each refugee application and each I-730 petition is adjudicated individually on its merits as understood at the time of the adjudication.

While the earlier refugee decision would be part of the record of evidence considered when deciding whether to grant the I-730 petition, the refugee officer's earlier decision does not bind the adjudications officer evaluating the separate I-730 petition. Although we strive for consistency, adjudications officers may be evaluating the marriage in light of facts, statutory changes, or legal guidance that was not available at the time of the refugee decision. We do appreciate your bringing to our attention possible

inconsistencies in USCIS marital status determinations. To the extent possible, we will attempt to identify and resolve those inconsistencies.

6. **Question:** We have been told that USCIS must complete security checks before issuing EADs to asylees after a grant of asylum from an Immigration Judge. Since the IJ can not grant asylum without security clearances being complete, why would USCIS need to run a new security check when the asylee applies for an EAD several days later?

   Response: USCIS is working diligently to ensure that EOIR-granted asylees, like all other asylees, receive their EADs promptly. USCIS is also very much aware of the requirements for completion of DHS-required background checks before immigration judges or the BIA can grant asylum or other forms of relief, as mandated by the EOIR background check regulations that went into effect on April 1, 2005 (70 FR 4743, Jan. 31, 2005)(codified at various parts of 8 C.F.R. §§ 1003 and 1208). Pre-grant completion of the background checks does enhance USCIS' ability to speed delivery of an EOIR-granted asylee's EAD. USCIS is working on procedures to improve communication regarding post 4/1/05 EOIR-granted asylees' cases so that any unnecessary duplication of recently completed background checks does not delay the issuance of the asylees' EADs. USCIS appreciates receiving information on specific cases where the initial EAD for a post 4/1/05 EOIR-granted asylee has been significantly delayed due to background checks. Such information will help us in developing appropriate internal procedures for EAD issuance to EOIR-granted asylees as well as others receiving EOIR grants of relief.

7. **Question:** A lawful permanent resident (who adjusted status as an asylee two years ago) had a refugee travel document, but it has recently expired. Can he apply for a re-entry permit instead of a refugee travel document? The instructions on the website are not clear.

   Response: Yes. Any permanent resident can apply for a reentry permit - regardless of the basis upon which they originally became a permanent resident.

8. **Question:** Our office has several I-129 extension cases that have been pending for more than one year. Currently, I-129 extensions for religious workers are taking a long time to adjudicate due to increased security reviews/site visits. Under 8 C.F.R. § 274a.12(b)(20), while the I-129 extension petition is pending, the religious worker is authorized to continue employment for a period not to exceed 240 days (8 months) after their I-94 card has expired. In the past, most I-129 extension petitions were adjudicated within 240 days, and therefore religious workers did not face a gap in employment authorization. However, this is no longer the case. Given the fact that this problem is a result of USCIS delays in conducting site reviews/security checks, would USCIS consider making a change/finding an administrative solution to the problem faced by I-129 extension applicants? Our suggested solution is that USCIS issue a memo/guidance clarifying that, in light of the current I-129 processing delays (which are the result of required site visits), it will administratively toll the number of days during which the I-129 petition was pending due to security reviews/site visits so that it does not count toward the 240 day time period set forth in 8 CFR 274a.12(b)(20).

   Response: There is no 240 "grace" period associated with the filing of an initial Form I-129. Thus, when an initial Form I-129 petition is filed with USCIS or a visa is requested at the Department of State, there is no tolling. When an initial Form I-129 is filed, USCIS may, depending on the circumstances, conduct a site visit.

When a Form I-129 is filed for an extension of stay, USCIS may conduct a site visit. There is no provision in the regulations at 274a.12(b)(20) for tolling when an R-1 nonimmigrant requests an extension of stay. Consequently, if a site visit were conducted when a Form I-129 is filed for extension of stay, the 240 day time limit would not be tolled.

9. **Question:** Please provide an update on what efforts USCIS is conducting on training community members, educators, advocates, etc. on the new naturalization test.

Response: The initial product and service line for 2008 includes a variety of tools designed to address each of the skill sets, linguistic and cognitive levels, and applicant variables. These tools include the many products and services which have already been developed and are available online at www.uscis.gov such as U.S. Civics and Citizenship Online, *A Promise of Freedom: An Introduction to U.S. History and Civics for Immigrants* DVD, Civics and Citizenship Toolkit, *Welcome to the United States: A Guide for New Immigrants*, *The Citizen's Almanac* and the Pocket size Declaration of Independence and Constitution of the United States. In addition, the Civics Flash Cards and the *Learn About the United States: Quick Civics Lessons* will be revised to align with the revised test items.

New products and services planned for 2008 include three workbooks on the Declaration of Independence, a Teacher Toolkit CD which includes many learning exercises related to the test, English Vocabulary Flashcards, a practice test online, and a set of sample skills worksheets aligned to the skills inventory.

For teachers and volunteers, the Office of Citizenship has begun a series of full-day teacher training conferences and half-day teacher training workshops. In addition, teachers may take advantage of the Electronic Teacher Training Program currently in development jointly with the U.S. Department of Education.

Outreach efforts will continue to be coordinated with our Office of Communication. Such efforts will include posting updated information on our website, participating in conferences and meetings, and developing updates for external newsletters and journals.