Office of Communications
U.S. Citizenship and Immigration Services

Questions and Answers

May 5, 2009

USCIS NATIONAL STAKEHOLDER MEETING

Answers to National Stakeholder Questions

Note: The next stakeholder meeting will be held on June 30, 2009 at 2:00 pm.

Questions and Answers

1. **Question:** At the last meeting, a number of attendees noted a very high rejection rate for N-400 fee waivers submitted to the Lockbox. USCIS committed to investigating the issues. Can you provide an update? In addition, can USCIS confirm what guidance is being used in the adjudication of these requests?

   Response: We will complete a review this week of the discretionary fee waiver process at our Phoenix and Dallas Lockbox facilities. As part of our review, if USCIS determines that a previously denied fee waiver request warrants review and approval as a matter of discretion, we will send notices to individual applicants requesting that they resubmit the fee waiver request with their N-400 application to USCIS for processing. Such notices will be going out next week. Although the review used existing guidance within Chapter 10.9 of the AFM, we continue to review the guidelines for adjudicating discretionary fee waiver requests and anticipate issuing updated guidelines in the future.

2. **Question**: How are applicants informed if fee waiver requests are approved, denied, or if there is additional information needed to support a request? Is a Form I-797 (notice of action) generated that reflects what the decision is with respect to the fee waiver request?

   Response: If the fee waiver is accepted, the applicant with receive a "Receipt" notice that will state the application was received and is in process. The Receipt notice also notes what payment was received for the applications and if the amount is $0, the fee waiver was approved.

   If the fee waiver is denied the applicant will receive a Reject notice explaining that the application was rejected because no fee was submitted as well as a G-1054 that states the Fee waiver request was denied because the person was either not eligible for the fee waiver or additional informational information is needed.

   It is important to note if the fee waiver is rejected for other reasons, such as no signature, the fee waiver request is not adjudicated nor is a G-1054 included if an application is rejected for other reasons. The reason for rejection would be on the Reject Notice.

   As a caution to for any future submissions: if requesting a fee waiver, please do not use red ink to state you are making a fee waiver request. The scanner used at the Lockbox facilities does not pick up the red ink.

3. **Question**: Many clients use a "care of" address to receive their mail, and even though we fill out the c/o line on the relevant form, the c/o name often does not appear on mail addressed to the client. Clients have had EADs and Form I-551s returned to USCIS as undeliverable because the c/o name was not on the envelope. If a name is placed on a c/o line, it should appear on all mail a ddressed to the applicant. Please note also that some forms, such as the I-765, do not have a s eparate line for a c/o name.

   Response: In accordance with 8 CFR 103.2(b)(19), it is the practice of USCIS to mail documents directly to the applicants or petitioners. If the applicant's address includes a c/o line we do not delete it, that is where the produced documents will be mailed.

4. **Question**: For several I-751 and I-129F petitions recently filed with the Vermont Service Center, we have noticed that I-797 receipt notices are only being sent to the applicant's representative. In the past, with other Service Centers, both the applicant and the representative have received copies of these notices. What is the Vermont Service Center's policy on the issuance of receipt notices and other correspondence when an applicant is represented by counsel? To whom will these notices be sent?

   Response: The Vermont Service Center does not have a separate receipting policy. The two USCIS systems used for receipting the Forms I-751 and I-129F have separate capabilities. The USCIS MFAS system that the I-751 is processed in produces only one receipt notice. When a G-28 is filed with the I-751, the attorney's address is prioritized and will receive the only receipt notice. For the Form I-129F, the USCIS CLAIMS system will print a receipt notice for both the I-129F petitioner and their attorney, if a G-28 is filed.

5. **Question**: How do the Nebraska and Texas Service Centers view marriages that take place in refugee camps which may not be registered with the civil authorities of the countries where the camps are located. For example, if a marriage takes place in a refugee camp in Thailand and is conducted by the camp authorities, but is not registered with the local District Office as is normally required of marriages taking place in Thailand, will USCIS recognize the marriage for purposes of an I-730 refugee/asylee petition? If so, what type of evidence should be submitted (affidavits, photos)?

   Response: The marriages could be valid for immigration purposes. In the refugee context, the Service has previously taken the position that the failure to formally perfect/register a marriage may not invalidate the marriage for immigration purposes if the failure is related to the flight from persecution.

   If the refugees are prevented from registering their religious, tribal, or customary marriages with the government due to circumstances beyond their control, and the reasons are related to the persecution of this group, the marriages may still be valid for immigration purposes. Examples of circumstances beyond the couple's control and relating to the flight from persecution would include inability to access host country institutions due to refugee camp policies or conditions, discriminatory government policies or practices, and other consequences of the flight from persecution.

   Additionally, a couple who has been prevented from formal perfection of the marriage must also show other indicia of a valid marriage. The relevant considerations may include: holding themselves out to be spouses, cohabitation over a period of time, children born to the union, and the color of a marriage ceremony. See Matter of Coletti, 11 I&N Dec. 551, 556 (BIA 1965) (setting forth these factors, and holding that the absence of a formal perfection of a religious marriage did not invalidate marriage for immigration purposes).

If marriage meets the relevant criteria, it should be considered a valid marriage for immigration purposes. This analysis should apply, regardless of whether the beneficiary is the spouse or a child of the refugee petitioner. (In fact, in Matter of Coletti, the BIA held that the petitioner's unregistered religious marriage was valid for immigration purposes, and that as such, he was ineligible for a preference visa as an unmarried son of a US resident alien). We would need to have evidence the marriage meets all the relevant criteria, which would include two written statements, sworn to or affirmed by at least two persons who were living at the time and who have personal knowledge of the event they are trying to prove. The persons making the statements (affidavits) may be relatives; however, affidavits written by the petitioner or the beneficiary are not acceptable. Each affidavit should contain the following information regarding the persons making the affidavit; his/her full name and address; his/her date and place of birth; his/her relationship to the petitioner, if any; full information concerning the event; and complete details concerning how he/she acquired knowledge of the event. These affidavits should address the facts concerning the marriage in the refugee camp.

If a civil record does not exist, they must submit a written statement, on official letterhead, from the relevant government or other competent civil authority, establishing that the marriage certificate does not exist and/or is not available in that country. The statement must indicate the reason the record does not exist and indicate whether similar records for the time and place are available. If a statement cannot be obtained due to circumstances beyond their control, and the reasons are related to the persecution of this group, we would need evidence of this before we can accept secondary evidence.

6. **Question**: Are security checks, background checks and FBI checks the same thing? Service centers are still indicating that applications are pending beyond processing times due to security and background checks. If these aren't the FBI checks, which are no longer backlogged, then what are they and what is the average time that these should be taking?

   Response: The phrases "security checks" and "background checks" are synonymous terms for the criminal and national security checks that USCIS initiates for all applicants for a U.S. immigration benefit to ensure they are eligible for that benefit. Security/background checks used by USCIS to screen individuals who have applied for immigration benefits include the Federal Bureau of Investigation (FBI) Fingerprint Check, the FBI Name Check, and the Treasury Enforcement Communications System (TECS)/ Interagency Border Inspection System (IBIS) Check.

   FBI and USCIS have worked together to end the FBI name check backlog. This means that there are no delays from the FBI in giving us results for the caseload we submit to them for a security check. Cases previously delayed as a result of the FBI name check process have resumed processing through regular work flow. This includes fingerprint updates, scheduling of interviews, requests for evidence, and other reviews to determine an individual's eligibility for the requested immigration benefit.

   As is the case with all security checks undertaken by USCIS, if information is provided through these checks that may impact eligibility then this information would need further evaluation, and may need additional interaction with agencies outside USCIS to get updated or additional information. This could result in additional delays in processing.

   The average processing time for N-400s and I-485s is projected to be less than six months by the close of FY09. We have focused renewed efforts in ensuring that those cases previously delayed

for a variety of reasons, including those delayed as a result of pending background checks are worked as quickly as possible. You can find individual office processing times on our website at: https://egov.uscis.gov/cris/jsps/ptimes.jsp. If your case is delayed beyond those processing times, you may wish to make an inquiry through the USCIS helpline at 1-800-375-5283.

Also, we are currently reviewing the language in the notices we send in response to a case status inquiry to ensure that it is responsive to the customer inquiry without compromising the integrity of our adjudication process.

7. **Question**: Can you please clarify the naturalization residency requirements as they pertain to migrant farm workers? One of our affiliates has a migrant farmworker client who has two residences. He spends half the year in Ohio and half the year in Georgia planting onions. He filed for naturalization in Ohio, but was denied for failing to meet the residency requirement for Ohio because he filed his income taxes in Georgia. The denial also says that he did not meet the 90-day residency requirement in Ohio before filing (he was a few days short). We're concerned that if he re-files the N-400 in Georgia, he may be denied for failing to meet the residency requirement there as well, since if he has to wait 90 days before filing there he'll probably be living back in Ohio by the time he is called for an interview in Georgia.

   Response: The situation described above is addressed in USCIS regulations at 8 CFR 316.5(b)(4):

   (4) Residence in multiple states . If an applicant claims residence in more than one State, the residence for purposes of this part shall be determined by reference to the location from which the annual federal income tax returns have been and are being filed.

   By the rule cited above, an applicant who resides in multiple states during the course of the statutory period should apply for naturalization in the state where his or her federal income tax returns are being filed. If the applicant happens to be in another state at the time when the naturalization examination is scheduled, he or she can either return for the interview, request a transfer of the application to the jurisdiction where he or she has moved, or request a reasonable postponement until a time when he or she expects to be back in that jurisdiction. The N-400 filing should be timed to take into account the 90-day requirement. Applicants should note, however, that requests for transfers to other offices can slow down the process for the applicant, as the paper file must be pulled, mailed, receipted by the receiving office, worked into that office's appointment queue, etc.