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

Question & Answer

July 29, 2008

USCIS NATIONAL STAKEHOLDER MEETING

Answers to National Stakeholder Questions

Note: The next stakeholder meeting will be held on August 26, 2008 at 2:00 pm.

1. **Question:** Is it possible to get an I-730 petition expedited, in a case where a family member is in particularly acute danger and the petitioner has evidence of that? We have filed formal requests and have had no response, been told it is possible to expedite such petitions, or been told it is impossible as a matter of policy. If an I-730 expedite request is possible, what is the correct procedure?

   Response: Requests for expedites can be accepted for the following reasons: severe financial loss, extreme emergencies, humanitarian concerns, requests from the Department of Defense, in the national interest, or service error.

   An expedite request must show additional evidence of the above circumstances in order to be considered. The petitioner must show real proof of emergency, such as a letter from the Red Cross or UNHCR.

   a. Is it the same for the Texas and Nebraska Service Centers?

   Response: If a petitioner is seeking to expedite a pending I-730 petition, he/she should contact the National Customer Service Center and request that the pending case be expedited and provide the justification for the request. In addition, the petitioner should provide evidence of the need for expedited treatment to the service center having jurisdiction over the petition. Requests for expedites are considered on a case-by-case basis. The expedite request process is the same for the Texas and Nebraska Service Centers.

2. **Question:** When an individual is granted withholding of removal and is later 245(i) eligible to adjust status based on an approved petition, will USCIS adjudicate the I-485?

   Response: Certain individuals who have been granted withholding of removal by an Immigration Judge and who by virtue of their "arriving alien" status remain for adjustment purposes under the jurisdiction of USCIS may file for such relief assuming they are 245(i) eligible. USCIS would accept such a filing with the proper fees and render a final decision on the case. Each application would be adjudicated on its own individual merit and each applicant would be required to establish that they are admissible to the United States under all provisions of the law not covered under 245(i) of the Act.

   Please note that where an applicant granted withholding subsequently applies for adjustment of status, and the applicant is other than an arriving alien, the Immigration Judge retains jurisdiction over the matter and the application.

3. **Question:** We have a question about immediate relative parents with a minor child where the United States citizen files I-130s for the parents as immediate relatives and would also like to file for the minor

child. Are there any options for keeping the family together even though normally the child would be fourth preference or have to wait for the parents to file for her under 2A preference?

Would USCIS consider granting humanitarian parole in such a case?

Response: Yes, USCIS would consider a request for humanitarian parole in this situation.

4. **Question:** Please provide an update on the status of the issuance of the regulations for adjustment of status for T-visa recipients. Is there anything that the CBO community can do to assist in getting them promulgated?

   Response: This regulation remains a priority for DHS. We are diligently working to publish it, but can provide no date certain for publication at this time.

5. **Question:** Some Iraqi Special Immigrant Visa (SIV) holders have returned to the Middle East to continue to assist U.S. government forces. Do the regular rules of abandonment apply to them or will USCIS consider exceptions for individuals serving the U.S. in this capacity?

   Response: A Lawful Permanent Residence (LPR) planning to travel out of the United States for more than one year up to two years will require a reentry permit. For all travel that will exceed two years, the LPR in addition to the reentry permit will need to apply for a returning resident special immigrant visa. If the question is in reference to abandonment of LPR status for readmission, the regular rules concerning abandonment of LPR status apply. Abandonment of LPR status depends on the LPR's intent. If the SIV LPR returned abroad to work on a temporary (even if prolonged) basis, with the intent of returning to the U.S. once that temporary purpose was accomplished, then, the SIV LPR will not be considered to abandon his/her LPR status. However, if the SIV LPR returned abroad with the intent of giving up LPR status (or formed that intent after going abroad), then the person could be found to no longer be an LPR. In that circumstance, DHS bears the burden of proving abandonment. See Matter of Huang, 19 I&N Dec. 749. Also, an LPR who wishes to apply for naturalization accordingly Sec 316.(b) applies for preservation of residence for naturalization the LPR will need to file form N-470, Application to Preserve Residence for Naturalization purposes.

6. **Question:** It is stated in 8 CFR § 245a.2(t)--Limitation on access to information and confidentiality. (3)--**No information furnished pursuant to an application for legalization under this section shall be used for any purpose** (emphasis added) except: (i) To make a determination on the application; or, (ii) for the enforcement of the provisions encompassed in section 245A(c)(6) of the Act, except as provided in paragraph (t)(4) of this section.

   In Masri 22 I & N Dec. 1145 (BIA 11/30/99), "information provided in an application to adjust an alien's status to that of a lawful temporary resident under section 210 of the Act is confidential and prohibited from use in rescission proceedings under section 246 of the Act, or for any purpose other than to make a determination on an application for lawful temporary residence, to terminate such temporary residence, or to prosecute the alien for fraud during the time of application." While Masri refers to INA § 210, that § has similar confidentiality language.

   Would USCIS please confirm that false information given in an amnesty case under INA § 245A, may not be a basis for denying adjustment of status under § 245. See 8 CFR § 245a.2(t).

Response: Generally, information provided pursuant to an application for legalization under section 245A of the Act is confidential and may not be used by USCIS. Such information may be used if the information is available from another source or if it relates to whether the applicant has been convicted of a crime. INA § 245A(c)(5)(D). The legalization confidentiality provisions do not, however, relieve an applicant for adjustment of status of his or her obligation to provide truthful answers on his application for adjustment of status and at any interview. Question 10 on the Form I-485, *Application to Register Permanent Residence or Adjust Status*, asks "Are you under a final order of civil penalty for violating section 274C of the Immigration and Nationality Act for use of fraudulent documents or have you, by fraud or willful misrepresentation of a material fact, ever sought to procure, or procured, a visa, other documentation, entry into the United States or any immigration benefit?" If the false information provided during the legalization case rises to the level of fraud or willful misrepresentation of a material fact, an applicant would be obligated to disclose the information on the Form I-485. In such a case, the applicant may be determined to be inadmissible under section 212(a)(6)(C) of the Act and, therefore, ineligible for adjustment of status. Failure to disclose such information could result in criminal prosecution.

7. **Question:** On April 8, 2008 Michael Dougherty, CIS Ombudsman, made a recommendation that USCIS clarify its refund of fees procedures and revise the Adjudicator's Field Manual, Section 10.10 "Refund of Fees" accordingly. Has USCIS responded and if so, what was it's response and what progress has been made in this regard?

   Response: The response provided to the USCIS Ombudsman's office is below:

   USCIS appreciates the Ombudsman's interest in the issue of fee refunds. The two parts of the recommendation are addressed separately below:

   Clarify the refund of fees procedures and revise the Adjudicator's Field Manual, Section 10.10 "Refund of Fees" accordingly.

   This has been accomplished. The Adjudicator's Field Manual, Section 10.10 "Refund of Fees," was updated in March of this year. The applicant or petitioner is now instructed to request a refund by contacting the customer service line or by submitting a written request to the office having jurisdiction over the application or petition. USCIS will make a determination to approve or deny the request based on the available information. If the request is approved, USCIS – and *not* the applicant or petitioner – will complete Form G-266, Request for Refund of Fee.

   Provide customers with a way to track the status of their requests for refunds.

   Requests for refunds currently are not "receipted in" like applications or petitions. Consequently, USCIS is not capable of tracking the status of a refund request in the same manner that USCIS is capable of tracking the status of an application or petition. As an interim solution, customers can contact the National Customer Service Center (NCSC) in order to obtain an update on the status of their refund requests. The NCSC will submit a "Service Request" to the local field office or service center asking for a status update. The appropriate office will respond to the customer within thirty days. USCIS is now in the process of enhancing the Service Request Management Tool (SRMT) within the Customer Relations

Information System (CRIS). As such, customers should not begin making inquiries with the NCSC until after October 1, 2008.

This interim solution eventually will be overcome by the transformation of the agency's information systems. In a transformed operating environment, customers through personal accounts will be able to keep track of their interactions with USCIS, including the amount and status of any refund requests. The electronic nature of the account management service will also allow USCIS to systematically track, manage, and resolve refund requests. USCIS will continue to keep the Ombudsman's Office apprised of the agency's progress with these efforts.

8. **Question:** Is an individual with a pending I-730, who triggered the 10 year bar by departing the US after accruing >1 year Unlawful Presence, eligible for a waiver when applying for admission the US as an asylee, after I-730 approval?

   If so what is the standard and may the waiver be granted for humanitarian reasons (to assure family unity, for public interest) provided that the applicant is not inadmissible on any other ground that cannot be waived?

   May the waiver be requested at the POE or must it be requested at a US Embassy/Consulate?

   Response: There is no waiver necessary for asylee follow-to-join applicants at overseas processing because the inadmissibility grounds do not apply to those seeking admission as asylees. The interviewing officer determines whether 1) the required relationship with the person granted asylum exists; 2) the applicant before him or her is barred from asylum for the reasons spelled out in statute and regulations (e.g., certain criminal and terrorist-related grounds, etc.); and 3) discretion should be exercised favorably. Unlawful presence in the United States would be one negative factor to be considered, along with others, in the exercise of discretion. Generally, however, the positive factors of family reunification and, in some cases, the need for protection outweigh this factor and it is unlikely that discretion would be exercised negatively based solely on unlawful presence.

9. **Question:** When an individual is granted asylum the I-94 issued does not state "Employment Authorized." Will USCIS consider changing the stamp due to the fact that asylees are employment authorized incident to status?

   Response: USCIS will examine changing the approval stamp on I-94s issued to asylees to indicate that asylees are employment authorized. USCIS will need to coordinate any action taken with regard to the approval stamp on I-94s with US Customs and Border Protection, which also issues I-94s to derivative asylees who enter the United States pursuant to approved I-730s.

10. **Question:** What documentation is USCIS looking for on N-400 applications for clients who have traffic citations only (no arrests), such as speeding tickets? This is in reference to the Good Moral Character section, question 16, which asks if you have ever been arrested, cited, etc. Also, what is expected at the N-400 interview regarding these traffic tickets?

    Response: Typically if an individual only has minor traffic citations with no arrests resulting (i.e. speeding tickets), they will not be required to submit any additional information with the N-400. However, if, during the course of the interview, an adjudications officer determines that there are

circumstances that warrant further investigation, (e.g. there is an indication that the applicant has failed to pay fines associated with the citations), the officer may request additional documentation. (e.g. payment, certified police/court documents indicating such).

11. **Question:** Recently we have seen multiple Requests for Evidence where the Nebraska and Texas Service Centers request a full medical exam for a refugee or a derivative asylee, who already completed it overseas. This causes undue delays and expense for the clients, who should not be required to submit them. According to AFM section 23.6©, refugees and derivative asylees who did the medical overseas are not required to do it again. Please explain if there has been a change in policy. If there has not been a change in policy, please suggest how we can overcome these requests for an additional medical exam.

    Response: According to 8 C.F.R. 209.1(c), refugees who already completed a full medical exam overseas do not submit another exam here in the U.S., unless a Class A medical condition was identified on the initial exam. However, refugees are still required to submit vaccination results with their I-485 application. Since the Form I-693 has been revised to incorporate the vaccination supplement, refugees will need to submit only pages 1 (Part 1), 3, and 5 of the new I-693 to show the vaccination results. The full medical exam does not need to be redone. These same requirements apply to derivative refugees.

    According to 8 C.F.R. 209.2(d), asylees must submit with their I-485 application a medical exam conducted within the U.S. by a designated civil surgeon and notated on Form I-693, including vaccination results. This same requirement applies to derivative asylees. However, USCIS is in consultation with the CDC to determine if our current policy can be changed so that derivative asylees who completed the full medical exam overseas do not need to complete a medical exam within the U.S., provided there is no Class A medical condition and the applicant has filed his/her I-485 within one year of eligibility.

12. **Question:** What is the procedure for an individual present in the U.S. on Humanitarian Parole to request "re-parole" (an extension of humanitarian parole) if a) the initial parole was granted by ICE; or b) the initial parole was granted by USCIS?

    Response: For USCIS to consider Humanitarian Re-Parole requests on an initial Humanitarian Parole granted by either USCIS or ICE, we require a new application and fee that is clearly marked RE-PAROLE REQUEST. The USCIS website has recently been updated to provide, in detail, information on how to submit a complete application package for Humanitarian Parole, please visit www.uscis.gov/humanitarianparole.

13. **Question:** There is some concern among both CBOs and civil surgeons regarding the new requirement on the I-693, Report of Medical Examination and Vaccination Record, to receive the HPV vaccine. Is the HPV vaccine recommended or required? If required, who is required to take the vaccine? Also, are applicants required to just take the initial dose for the purposes of the I-693, or must they complete the series?

    Response: The human papillomavirus (HPV) vaccine is one of several new age-specific required vaccinations that have been added to the *Technical Instructions for Vaccination* for civil surgeons conducting medical examinations of aliens. These newly added vaccination requirements, effective July 1, 2008, were a result of recommendations from the U.S. Advisory Committee on Immunization Practices (ACIP) and are required for persons to be medically cleared for adjustment of status. As a reminder, Health and Human Services/Centers for Disease Control have the regulatory authority to set the

requirements for our medical exams and we are bound to these requirements. As such, any vaccination recommendation made by the ACIP for persons living within the U.S. becomes a requirement for immigrants.

The HPV vaccine is required for females ages 11 through 26 years of age. As with all the vaccinations, because completion of a vaccine series often takes several months, applicants are currently not required to complete a series before being medically cleared to proceed with adjustment of status. They must, however, complete as many doses as was medically appropriate at the time the medical exam was conducted and are encouraged to follow-up with their primary physicians at a later date to finish any series. Further information and updates on the required medical exam and vaccines can be accessed at www.cdc.gov/ncidod/dq/health.htm