Agenda

USCIS NATIONAL STAKEHOLDER MEETING

January 26, 2010
111 Massachusetts Avenue, NW
Tomich Conference Center
2:00 – 4:00 pm

Questions and Answers

1. **Question**: Can USCIS provide updated numbers of VAWA, T, and U approvals and denials – including derivatives and adjustments? When does USCIS expect to issue regulations or guidance on TVPRA 2008 provisions?

   Response: The table below provides figures for VAWA and T visas for the past 5 fiscal years and U visas for the past fiscal year as this is the only year they have been reported.

	I-360 SELF-PETITION VAWA		I-914 T-VISA		I-914 T-VISA (IMMEDIATE FAMILY MEMBERS)		I-918 U-VISA		I-918 U-VISA (IMMEDIATE FAMILY MEMBERS)	
FISCAL YEAR	APPROVALS	DENIALS	APPROVALS	DENIALS	APPROVALS	DENIALS	APPROVALS	DENIALS	APPROVALS	DENIALS
2005	8,452	2,245	113	321	73	21	-	-	-	-
2006	6,313	1,949	212	127	95	45	-	-	-	-
2007	5,934	2,373	287	106	257	64	-	-	-	-
2008	4,346	2,156	243	78	228	40	-	-	-	-
2009	6,374	1,671	313	77	273	54	5,825	688	2,838	158

   USCIS will incorporate the TVPRA 2008 provisions into future T and U regulations. In the meantime, guidance about implementation of the TVPRA is in the final stages of the clearance process and will be issued soon.

2. **Question:** How are the H-1B1 numbers for Singapore and Chile counted? We know that the 6,800 numbers for this category are subtracted from the regular cap, reducing it to 58,200. Are the H-1B1 numbers being returned to the regular H-1B cap? If so, when and how many?

   Response: The unused 6,100 H-1B1 numbers from last year (fiscal year (FY) 2009) were included in the FY 2010 cap numbers allocated beginning on April 1, 2009. As mentioned in the question, Congress has established an annual H-1B cap of 65,000. Of that number, 6,800 are set aside for the H-1B1 program under terms of the U.S.-Chile and U.S.-Singapore Free Trade Agreements. The total H-1B cap number available for FY 2010 is therefore 58,200 (65,000 minus 6,800). The law provides that any of the unused Chile/Singapore

numbers from a fiscal year be reallocated for use in the subsequent fiscal year. Therefore, the 6,100 unused Chile/Singapore H-1B1s in FY 2009 were added to the 58,200 regular cap numbers available for FY 2010 to get 64,300 regular cap visas available for FY 2010 (this excludes the 20,000 master's exemption). The FY 2011 cap, to be allocated beginning in April 2010, will be based on the same formula: Subtract 6,800 for the FY 2011 H-1B1 reservation from 65,000, then add back in the unused H-1B1 numbers from FY 2010, based either on projected H-1B1 usage to the end of FY 2010, or on actual determined usage during that year, depending on when the cap is hit. In FY 2010 to date, 129 of the 6,800 numbers have been used. Although the regular H1B cap for FY 2010 is closed, petitioners may continue to request H-1B1 visas or change of status under the Chile/Singapore Free Trade Agreement.

3. **Question:** We believe that USCIS accepts more H-1B petitions than there are cap numbers because of an assumption that a certain percentage of petitions will be denied or withdrawn. What is total number of filings that USCIS will accept this year to achieve the statutory number of H-1B approvals?

   Response: Yes, USCIS has historically accepted more H-1B petitions than available cap numbers based on the assumption that some petitions will be denied, rejected or withdrawn. However, this year was different from previous years as we were able to use actual data on approvals to determine when to end the filing period for the regular and master's caps. We applied approval, denial, withdrawal, etc. rates from the cases that had already been adjudicated to our pending cap-subject petitions to estimate how many of the pending petitions may be eligible for a cap number. We then added that number to the number of petitions that had already been approved for an FY10 cap number. When the estimated regular cap eligible number reached 64,300 and the estimate master's cap eligible number reached 20,000, we closed the filing period. We ran a lottery on the filings received on Monday, December 21st since we only needed a portion of those filings to reach the cap.

4. **Question**: What is the best way to resolve the repeated rejections of fees for Form I-90s? As an example, we filed a Form I-90 on 06/20/2009 with a money order of $370 which was returned and the application was denied for incorrect fee remittance. A second Form I-90 was filed on 7/10/09 with one check of $290 and another of $80 (total of $370 fee). USCIS returned the $80 check, stating it was an extra remittance and issued a receipt for $0. This application was then denied for not providing the proper fee. We have also filed the Form I-90 with a fee of $370 ($290 check + $80 check) and USCIS returned both checks ($290 and $80) as an unnecessary extra remittance and included a receipt of $0. We have called the NCSC and made INFOPass appointments on at least three occasions and have been advised it was not in their ability to resolve the issue. What is the proper amount to file and how can this situation be resolved if it occurs in the future?

   Response: The proper amount to file is dependent upon your reason for filing. Please ensure that you read the Form I-90 Instructions found on the USCIS website prior to completing the form and submitting to the USCIS Lockbox. If you feel the application was rejected in error, Lockbox Operations can look into specific cases if you provide the name and/or rejection notice number for research and response. Please help us by continuing to refer all queries regarding fee rejection to Lockboxsupport@dhs.gov, rather than to any local offices or the National Customer Service Center.

5. **Question**: The issue of 14-year-olds is confusing with respect to the Form I-90.When submitting Form I-90 applications for teenage clients who are older than 14 years and 30 days and whose cards will not expire before their 16th birthday, we have checked box "g" ("I have reached my 14th birthday since my card was issued") and sent the applications with the full fee of $370. In response, we have received rejection notices stating: "The applicant marked "g" in part 2, Question 2, as the reason for filing the Form I-90. This reason

requires the applicant to have reached their 14th birthday since their permanent resident card has been issued and the current card will expire before their 16th birthday. Furthermore, applicants must file the form I-90, within 30 days of reaching their 14th birthday. Our records show the applicant either had not filed within 30 days of reaching his/her 14th birthday, or the current card expired after the applicants 16th birthday.

The local USCIS office we contacted has advised us to send the I-90s with the full fee of $370 and box "e" ("My name or other biographic information has changed since the card was issued") checked. However, checking this box isn't actually true for our clients, since nothing has changed about their biographic information. Giving teenage permanent residents just 30 days to replace their green cards in a free and straightforward way is a very short timeframe. What is the basis for this 30-day timeframe, as it is not referred to at all in the regulations? And would USCIS consider extending this timeframe?

Response: 8 C.F.R. §264.5(b)(8) states that a permanent resident shall file for a permanent resident card when the bearer of the card reaches age 14 unless the existing card will expire prior to the bearer's 16th birthday. Currently, applicants whose cards will expire after their 16th birthday who correctly file the form type 2.g. with the $80 biometric fee payment within 30 days of their 14th birthday are being rejected in error as the Lockbox is not yet able to process those forms correctly. It is anticipated that this will be fixed by March 2010. On those occasions when we receive an inquiry for clarification of the rejection, we instruct the applicant to send the form, $80 fee and copy of the first rejection notice received (proof of filing within 30 days of the 14th birthday) to the following address:

The address for incorrectly rejected Form I-90 2.g. is:

USPS Mail
Nebraska Service Center
Attn: I-90
PO 87090
Lincoln NE 68501-7090

The Form I-90 application instructions clarify that applicants must file an application within 30 days after their 14th birthday to replace a card issued before their 14th birthday. After 30 days, the applicant must file type 2.f.; as the 2.g. will not be accepted after the 30 day window has closed.

One reason that the 30 day window is required by the Form I-90 instructions is that the applicant has never been fingerprinted in the immigration process. Thus a 30 day window encourages the applicants to submit a Form I-90 and attend a biometrics appointment in a timely fashion. There are no plans to change this requirement at this time.

If the applicant is unable to meet this deadline then the applicant would need to file with fee under a different reason for filing.

6. **Question**: A service provider in Florida has noticed a growing problem with delayed biometrics notices for N-400 and I-485 applications. Some clients get their receipt notice and their biometrics notice within a few days of each other, but for other clients, the biometrics notice arrives as much as nine months after the receipt notice. For some clients, the only way to get the biometrics notice is to call NCSC after several months of waiting. Could USCIS send out a biometrics notice with every receipt notice for an N-400 or an I-485?

Response: This should not be happening with notices for either adjustment or naturalization cases – if you have specific examples that can be shared we will investigate. Generally, USCIS will schedule biometric collection once preliminary processing has taken place and the case is deemed to be interview ready. Scheduling biometric collection for cases not interview-ready could end up sending the applicant to an ASC multiple times if the time limit for a biometric check expires before the case is ready for interview.

7. **Question**: According to current USCIS practice, when a green card is sent to an address, but the applicant does not receive it, and the package is not returned to USCIS as undeliverable, the client must pay a $370 fee to request another card. This is very difficult for indigent clients. Given the importance of this document, could USCIS institute a policy of sending green cards by certified mail, return receipt requested?

   Response: USCIS has developed a means to deliver our secure documents called the Secure Mail Initiative (SMI). This involves sending the secure documents using U.S. Postal Service Priority Mail with Delivery Confirmation. Using this process allows us to track each individual piece of mail electronically through the U.S. Postal Service and speeds our delivery time while enhancing accountability to customers. Currently, we are experiencing tremendous success with SMI in our travel booklet product line (Refugee Travel Documents, Form I-571 and Re-entry Permits, Form I-327).

   We have implemented the SMI process for re-mailing all permanent residence cards and booklets that have been returned to USCIS by the U.S. Postal Service.

   However, due to funding challenges we are unable to implement this initiative for initially-issued cards until the fiscal picture for USCIS improves. We will certainly advise you when this changes.

8. **Question**: The cap on H1-B visas has been reached for both cap subject applicants and Masters degree holders for 2009. The Director of USCIS has regulatory authority to "bridge" the gap for F and J visa holders whose stay will expire before new visas are available on October 1, 2010 pursuant to 8 C.F.R. 214.2(j)(1)(vi). USCIS has already extended the bridge to F visa holders. Will USCIS also extend this bridge to J visa holders for 2010 as they did in 2000?

   Response: The interim final rule on Optional Practical Training published in the Federal Register on April 8, 2008 permanently codified the "cap gap" in the regulations, by automatically extending any employment authorization and duration of status of an individual in F-1 status, for whom an H-1B petition has been timely filed, until October 1 of the fiscal year in which the H-1B visa is being requested. The rule eliminates the need for yearly ad hoc determinations and publication of Federal Register notices announcing the "bridge." The rule applies only to nonimmigrants in F-1 status and not to those in J-1 status. The final rule on Optional Practical Training will be published soon by ICE's Student and Exchange Visitor Program (SEVP). At this time, USCIS does not envision that the "cap gap" will be extended to those in J-1 status for 2010.

Closing Remarks/Announcements

- Office of Citizenship, 2010 Grants Program – introduction of the new grants program, further details to be provided at the February meeting