U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Public Engagement
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U.S. Citizenship and Immigration Services

Questions and Answers

USCIS Service Center Operations – American Immigration Lawyers Association (AILA) Teleconference

June 22, 2011

Overview

On June 22, 2011, the USCIS Service Center Operations Directorate hosted an engagement with AILA representatives. USCIS addressed questions related to the National Security Entry-Exit Registration System (NSEERS), Requests for Evidence, the EB-1 visa category, and court case decisions. The information below provides a review of the questions solicited by AILA and the responses provided by USCIS.

Questions and Answers

Question 1: During the last call, SCOPS indicated that USCIS was in the process of reviewing its policies respecting the National Security Entry-Exit Registration System (NSEERS). Is there any update on this process or any additional guidance as to whether USCIS will continue to deem aliens inadmissible for failure to register, or will prior noncompliance no longer be an issue?

Response: USCIS is drafting adjudicative guidance to address NSEERS issues. At this time, the guidance has not been cleared for release.

Question 2: In a related matter, are NSEERS registrants who change their address still required to use Form AR-11SR?

Response: No final decision has been made. In the interim the applicant could file a Form AR-11.

Question 3: Could SCOPS please advise on the filing location for concurrently-filed I-140/I-485 petitions? The direct filing instructions for the I-140 list the lockbox, while the instructions for the I-485 in this scenario list both the lockbox and the NSC/TSC.

Response: All I-140/485 concurrent filings must now be filed at the lockboxes, unless there is an accompanying I-907, in which case the filing must be sent directly to TSC or NSC depending on jurisdiction.

Question 4: May an employer which is cap-exempt under INA § 214(g)(5)(A) or (g)(5)(B) file its H-1B petition at VSC if the employer is located within the VSC's filing jurisdiction and the beneficiary has already been counted against the cap because of prior cap-subject H-1B employment?

Response: No. These petitions should be filed with the CSC. Page 19 of the instructions to Form I-129 state: "Regardless of work locations, the following types of petitions should **always** be sent to the **California Service Center**…3. H-1B petitions where the employer is statutorily exempt from the cap…"

Question 5: AILA members continue to experience problems with CRIS, which include the fact that many cases do not appear in the system, or information about the case is incorrect. At present, there is no way to get this information corrected online. In addition, transferred files are not being updated. In December 2010, AILA was told that: "The Customer Service Directorate has advised that there is a scheduled release for this weekend that should correct this issue. This has been an existing issue where the some of the action codes entered in the CLAIMS systems did not transfer over to the CRIS system during the daily feeds. Once the release is implemented, we can further review and determine if any issues still exist." Could SCOPS advise as to progress on IT enhancements that could allow for on-line or even e-mail correction of CRIS data? Could SCOPS advise CSD that the problem respecting transferred files not being updated in CRIS still exists?

Response: We have provided your information to our Customer Service Division for review and research on the issue. We will provide AILA an update once we receive it.

Question 6: AILA members report receiving denials of L-1A "new office"petitions where service centers conclude that there is insufficient proof of consideration, or inadequate consideration, for the acquisition by one entity of another, notwithstanding the submission by the petitioner of evidence in the form of executed contracts, stock certificates, and other documentation showing the corporate transaction. Please instruct service centers that the financial arrangements involved in a corporate transaction are not a proper area of inquiry so long as there is other evidence of the creation of a qualifying corporate relationship between the foreign and domestic entities.

Response: There may be circumstances in which it is necessary to request financial documentation to help establish a qualifying relationship. Such a determination must be made on a case-by-case basis. SCOPS will discuss this topic with the service centers. If AILA has examples where an I-129 L-1A petition was adjudicated improperly, please provide us with the receipt number, and we will review.

Question 7: AILA members report receiving denials of new office L-1 petitions because, in the view of the examiner, the petitioner has failed to demonstrate "[s]ufficient physical premises…" to satisfy the regulation at 8 CFR § 214.2(l)(3)(v)(A) or (vi)(A). Examiners are requiring a demonstration of sufficient space to house employees and operations at a point in the future, do not treat as satisfactory evidence that the new office will be located in a sublease or shared space location, and have denied petitions where photographs of the office location did not show any customers in photos of office space, or did not show "enough" furniture in photos because the space was new. Please instruct service centers that the "[s]ufficient physical premises"requirement is meant to be applied flexibly to take into account the actual "new office"needs of the petitioner, and are not meant to contemplate physical premises required at a point in the future.

Response: While these documents typically will not be necessary in making a decision, there may be times when in fact they are necessary in the decision process. SCOPS will discuss this matter with the service centers. If AILA has examples where an I-129 L-1 new office petition was adjudicated improperly, please provide us with the receipt number, and we will review.

Question 8: An AILA member has been informed that USCIS will not permit an R-1 nonimmigrant to "recapture" time spent outside of the United States, as it does for aliens admitted in H-1B or L-1 status. The regulation at 8 CFR § 214.2(r)(6) states that the five-year maximum for R-1 status pertains to a religious worker "who has spent five years in the United States...." The H-1B regulation at 8 CFR § 214.2(h)(13)(iii)(A) states that the six-year maximum applies to "[a]n H-1B alien… who has spent six years in the United States, and the L-1 regulation at 8 CFR § 214.2(l)(12)(i) states that the five- or seven-year limit applies to "[a]n alien who has spent five years in the United States in a specialized knowledge capacity or seven years in the United States in a managerial or executive capacity under section 101(a)(15)(L)…." Since the regulations governing periods of admission in all three categories use the same language, AILA requests that SCOPS issue formal guidance recognizing that an R-1 non-immigrant can also recapture time outside the U.S. during the period following the initial admission.

Response: The memorandum from Michael Aytes, Acting Associate Director for Domestic Operations, dated October 21, 2005 regarding Procedures for Calculating Maximum Period of Stay Regarding the Limitations on Admission for H-1B and L-1 Nonimmigrants (AFM Update AD 05-21) examined the relevant statutory term - "period of authorized admission" – which is found in both the H-1B (INA 214(g)(4) and L-1 (INA 214(c)(2)(D) context, and concluded that because the term "admission" is defined as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer" only time spent in the United States as an H-1B or L-1 counts towards the maximum. This memo, however, is specifically for H-1B and L-1 classifications.

The statute for R-1 classification at INA 101(a)(15)(R) refers only to a "period not to *exceed* five years" and does not reference a period of "admission", therefore falling outside of the ambit of INA 101(a)(13)(A). There is no provision in the statute or the regulations that would allow for recapturing of time spent abroad in R status. However, as per 8 CFR 214.2(r)(6) the five-year limitation on the statutory maximum total period of stay does not apply to R-1 nonimmigrants who did not reside continually in the United States and whose employment in the United States was seasonal or intermittent or was for an aggregate of six months or less per year. Furthermore, the limitations do not apply to R-1 nonimmigrants who reside abroad and regularly commute to the United States to engage in part-time employment.

Question 9: There has been confusion regarding the new filing instructions for Form I-290B. Please confirm that on page 3 of the instructions for Form I-290B, where it states: "You must file your appeal or motion with the USCIS office that made the unfavorable decision within 30 calendar days**"** after service of the decision, etc., the word "office" refers to USCIS Field/District Offices *as well as* USCIS Service Centers? Or, is the intent that the word "office" refers exclusively to USCIS Field/District Offices, and that all other Appeals and Motions should be filed with USCIS Service Center lockboxes, as designated, *except* for Appeals and Motions for VAWA, T and U applications/petitions? If the word "office" does *not* include USCIS Service Centers, please confirm that the National Benefits Center is deemed an "office" and not a "Service Center" for purposes of filing?

Response: Lockboxes now receipt I-290Bs Notice of Appeal or Motion to reconsider or reopen decisions rendered by the Service Centers or the National Benefits Center with some exceptions (i.e., the I-290B is filed with the Vermont Service Center if it relates to unfavorable decisions involving VAWA, T, and U Visas). Field Office decisions can still be appealed by filing the I-290B directly with the Field Office that made the unfavorable decision. Please read the case's denial letter for specific filing instructions.