U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Public Engagement
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

June 29, 2011

Questions & Answers

USCIS Quarterly National Stakeholder Engagement

Office of Intake and Document Production

Question: Receipt Issuance
Please address the delay in issuance of I-539 and I-130/485 receipts. In each instance, it is our experience, it takes 4+ weeks to receive a receipt.

Response: We are not aware of a delay in issuance of the I-539 receipts and would appreciate any examples that you could provide for further review. The delay in I-130/I-485's was due to an unexpected amount of cases falling into the case resolution queues, for review, as we transitioned our workload onto a new processing platform. This impacted our processing times and four weeks was the extreme.

We have performed in depth analysis, identified and implemented some changes to reduce the number of cases that need to be reviewed by USCIS staff.

Filling out the applications/petitions correctly with correct fees and signatures. Please refer to www.uscis.gov for filing tips which are located on each form page.

In addition, we have a designated e-mail address for these types of customer inquiries; lockboxsupport@dhs.gov.

Question: Fee Waiver Statistics
Please provide a month-by-month breakdown of fee waiver applications, approvals, and denials for each type of application, for March, April, and May 2011.

Response:

FY 2011 Fee Waivers

Form Type	Received	Approved	% Approved
EOIR	373	232	62%
I-102	208	10	5%
I-129	15	0	0%
I-130	819	1	0%
I-131	728	319	44%
I-140	1	0	0%
I-192	8,061	8,059	100%
I-193	185	185	100%
I-212	15	8	53%
I-290B	824	467	57%
I-290C	6	6	100%
I-360	292	250	86%
I-485	20,353	17,858	88%
I-539	619	544	88%
I-600	3	3	100%
I-601	254	183	72%
I-730	1	1	100%
I-751	787	369	47%
I-765	21,593	19,403	90%
I-765 TPS	412	315	76%
I-817	14	10	71%
I-821	349	290	83%
I-821 TPS	879	729	83%
I-824	174	79	45%
I-90	9,134	6,536	72%
I-929	31	31	100%
Motions	207	196	95%
N-336	83	66	80%
N-400	27,714	23,166	84%
N-565	1,145	710	62%
N-600	1,762	1,567	89%
Total Waivers	102,782	87,331	85%

Customer Service Directorate

Question: Online Case Status System

a) Receipt Numbers

Why do some "Receipt Numbers" never get into the case status systems? For example receipt numbers beginning with SIM? We have also found this to be an issue with MSC receipts.

> **Response:** Case Status Online provides users with secure, self-service access, via the web, to Claims 3 and Claims 4 USCIS systems status information. The USCIS Service Centers which process the customer applications and petitions within Claims 3 (C3) and Claims 4 (C4) feed status updates to the CRIS Case Status application each night. Currently the CRIS system interface is only with the C3 and C4 systems; hence the system only accepts Service Center receipt numbers.

b) Frequency of Updates

How often is the case status system updated? We have found that sometimes the case status system is never updated (ie-I-131 approved April 26 as of May 11 the case status system still says "we received the I-131" when in reality we already have the re-entry permit)

> **Response:** Information is fed nightly from the USCIS Case Management Systems, Claims 3 (C3) and Claims 4 (C4). Any case which has been changed from one History Action Code (HAC) to another will be updated in the CRIS database. The HACs provide important information to the customer such as receipt date, location, current status and further instructions. However not all HACs are displayed within the Case Status Online application. Each action code has the ability to have the display turned on or off for Case Status Online. This decision is driven mostly by the availability of information to CRIS from the requestors for CLAIMS 3 and CLAIMS 4. A few are not displayed because the action code tracks internal movement that does not add value to information we are providing the customer.

Question: Undeliverable Mail

Can an Officer at the Customer Service Center determine the contents of a document that was returned to the Service as undeliverable?

> **Response:** The ISOs at the Tier 2 Call Centers have been provided with access to the (Secure Mail Initiative); which allows the electronic submittal and tracking of mail to its destination. Once a valid receipt number is entered into SMI, the corresponding USPS tracking number, as well as the delivery status will appear. The ISOs at Tier 2 also have access to all USCIS systems and contacts in the field to verify the type of document(s) that were mailed.

Office of Performance and Quality

Question: Processing Times - Webpage Updates

How often is the processing time web-page updated? How accurate are processing times dates/time frames listed on processing time web-page?

> **Response:** Processing times are updated and posted monthly to the web on or about the 15th day of each month. The processing times are calculated from final statistics compiled 45 days prior to their posting and are based on the number of applications pending and applications received within each field office and service center. The processing times derived under this model are the result of mathematical computations and are not based on the specific age of each case. USCIS

does not possess the capability under its current paper-based processing model to manage and track adjudication processing based upon each unique applicant. Therefore, it is important to note that the processing time information is the "average" time that a case pending within a certain USCIS office is taking to be processed. Because the processing time figures are an average calculation, it is possible that there are individual cases that have been pending within the USCIS inventory for longer than the stated processing time indicates.

Based upon the current methodology for calculating processing times, USCIS requires 30 days to collect and conduct quality reviews on the performance data received from its field offices and service centers to ensure that the final data used to calculate the processing time information is accurate and reliable. Another 15 days is needed to calculate the processing times, receive field office and service center concurrence, and upload to the USCIS website. Although the processing time information has become aged by the time it is posted to the USCIS website, it generally remains accurate since processing times don't normally change that much from month to month.

Office of Citizenship

Question: Citizenship Test

Please provide an update on USCIS' efforts to conduct a records study to determine pass-fail rates on the revised citizenship test and look at its impact on different demographic groups, as compared to the previous version of the test. Please share any results or findings that are already available.

Response: USCIS contracted with ICF International to perform a record study to determine the pass rate for the redesigned naturalization test. In addition to this record study data collection, USCIS will have comparative data - comparing the current test with the previous test – in late summer 2011. USCIS will disseminate key findings in the fall.
In the meantime, USCIS continues to review and make publicly available data on applicant performance on the current test, which is available here:
http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=6c40ec90d8668210VgnVCM100000082ca60aRCRD&vgnextchannel=6c40ec90d8668210VgnVCM100000082ca60aRCRD

Office of Transformation Coordination

Question: "I-130 Automatization"

Suggestions:
1.- Documents should be able to be uploaded along with application.
2.- Repeated information from the I-130 should automatically flow to g-325a.

Response: Generally, USCIS ELIS, the online case management system, will require an applicant to scan and upload supporting documentation when he or she submits an electronic application. Similarly, in the event additional information or documentation is required after the electronic application and supporting document has been filed, USCIS will issue an electronic Request For Evidence (RFE) that will require documents to be scanned and uploaded in USCIS ELIS. Form I-130 will enter the USCIS ELIS online case management system in a subsequent release. Certain information may be pre-populated into Form I-130 from prior benefit requests or from supporting forms.

Office of Policy & Strategy

Question: Child Status Protection Act (CSPA)

a) INA 204(l) allows a beneficiary to proceed with the adjudication of a petition or application after the petitioner has died, assuming all eligibility requirements are satisfied. How does this law intersect with the Child Status Protection Act? For example, would a child who is eligible for 204(l) relief in the following circumstances still be able to claim protection under the CSPA?

- Petition was filed by US citizen parent on behalf of unmarried child under 21 in 2000. Petitioner died in 2001 while petition was pending. Beneficiary is still unmarried but is over 21. Can the child still claim immediate relative status when applying for 204(l) relief?

Response: Nothing in section 204(l) changes the way the CSPA applies to a given case. Given a scenario where the petitioner for an immediate relative child beneficiary was denied due to the death of the petitioner prior to enactment of 204(l), the beneficiary may file an untimely motion (with proper fee) based upon the provisions of 204(l). Assuming the child meets the requirements of 204(l) and such motion and the underlying petition are granted, the beneficiary would remain eligible for classification as an immediate relative child pursuant to CSPA, assuming he or she remains unmarried to the same extent as the beneficiary would be had the petitioner not died.

- Petition was filed by LPR parent on behalf of unmarried child under 21 in 2000. Priority date for F-2A became current and beneficiary filed for adjustment of status in 2005. Petitioner died while application was pending. Applicant is now over 21 and has filed a motion to reopen the revoked petition, pursuant to the December 2010 USCIS memo. Can the child still claim the F-2A category?

Response: Again, nothing in section 204(l) changes the way the CSPA applies to a case. Given this scenario, USCIS will first determine whether the beneficiary remained eligible for F2A classification at the time the adjustment was filed pursuant to CSPA. To wit, whether the beneficiary had a "CSPA age" under 21 and sought to acquire LPR status within one year of visa availability. If so, then, assuming the beneficiary meets the eligibility criteria for 204(l) and remains unmarried, the applicant may remain eligible for adjustment in the F2A classification.

- Petition was filed by US citizen parent on behalf of married son in 2000. Married son has derivative child. Petition was approved. Priority date became current in 2008 and principal beneficiary filed for adjustment of status. Derivative son was still under 21 using CSPA formula. Principal beneficiary died in 2008 while application was pending. Derivative child is still unmarried but is now over 21 using CSPA. Derivative child can now take advantage of 204(l) relief. Can child still be considered a derivative and what is the impact of CSPA's one-year filing requirement?

Response: Again, nothing in section 204(l) changes the way the CSPA applies to a case. Eligibility for CSPA in this type of scenario involves consideration of many variables. Given the fact pattern presented, whether the derivative sought to acquire LPR status within one year of visa availability is contingent upon when the principal beneficiary passed away with respect to when a visa became available. In the scenario provided above, the visa [first] became available in 2008 and the beneficiary died in 2008, indicating that the derivative did not have a full year of visa availability at the time the principal beneficiary died. Section 204(l) provides, simply, that the alien's eligibility is to be determined as if the qualifying relative had not died. So the alien's effective age, for CSPA purposes, will still be determined by subtracting the number of days between the filing and initial approval of the visa petition from the alien's age at the time the visa number first became available.

As such, if the derivative in this scenario had filed an application for adjustment prior to the principal beneficiary's death, and the adjustment was denied as a result of the death, and the derivative may file an untimely motion based upon 204(l) and proceed with derivative adjustment as a child based on a CSPA age under 21 that was locked in by having sought to acquire within one year. If, however, the derivative had not sought to acquire, the derivative would need to seek humanitarian reinstatement of the original petition. To ensure that the alien has the full year to seek adjustment, USCIS will consider the alien to have met the one-year filing deadline if the alien applies for adjustment or a visa within one year from the date USCIS reinstates the approval. If the priority date has regressed, however, the alien's CSPA age will be recalculated again based on the date the priority date is reached again, just as would have been the case if the qualifying relative had not died.

Also, if the one year period had already lapsed before the principal beneficiary died, reinstating the approval of the petition under section 204(l) does not give the derivative beneficiary a new one year period.

b) When section 204(l) does not apply, because the petitioner died after approval of the petition and before any application was filed, the petition may be reinstated based on humanitarian grounds. Does the CSPA apply in those cases?

- Petition was filed by LPR parent on behalf of unmarried child under 21 in 2003. Petitioner died in 2005 after petition was approved. Priority date for F-2A became current in 2008 while beneficiary was still under 21. Petitioner filed for humanitarian reinstatement later in early 2008. Motion/request was approved last month. Beneficiary/applicant is now over 21. Can he still claim the F-2A category? What about the one-year filing requirement?
- Petition was filed by US citizen on behalf of married sibling in 2000. Married sibling has derivative child. Petition was approved. Principal beneficiary died in 2004. Priority date became current in 2007 while derivative child was under 21, but the law at the time did not allow for the filing of a motion to reinstate. Law enacted on October 28, 2009 and derivative beneficiary filed to reinstate revoked petition. At the time, derivative was over 21 using biological age but under 21 using CSPA age. Motion/request is approved last month. Does CSPA apply and what is effect of one-year filing requirement? Same facts only child was over 21 when priority date became current in 2007 but under 21 using CSPA. Child is over 21 using CSPA when filed to reinstate petition and motion is still pending.

Response: Again, section 204(l) does not change CSPA. CSPA was enacted for the purpose of protecting children from aging out because of administrative delays in adjudicating visa petitions. It is well established that CSPA does not protect children from aging out on account of other issues, such as lengthy waits for visa availability, and in preference cases requires the child to seek to acquire lawful permanent residence within one year of visa availability. As such, USCIS does not find that the effects of 204(l), enacted more than 7 years later, supersede the intended purpose of CSPA. Rather, 204(l) provides, simply, that the alien's eligibility is to be determined as if the qualifying relative had not died. So the alien's effective age, for CSPA purposes, will still be determined by subtracting the number of days between the filing and initial approval of the visa petition from the alien's age at the time the visa number first became available. If, using this calculation, the alien's CSPA age is under 21, the reinstatement of a visa petition approval will be treated as the start of the one-year application window under section 203(h)(1)(A). Thus, an alien will not lose CSPA eligibility solely because of the qualifying relative's death. But if the alien's CSPA age, under the standard statutory calculation, was already over 21, then of course the alien's case will be governed by section 203(h)(3) and *Matter of Wang*, 25 I&N Dec. 28 (BIA 2009).

c) Can a child over 21 (but under 21 using CSPA and still in the F-2A category) opt out of automatic conversion to the F-1 category when the LPR petitioner naturalizes? The statute appears to provide this opt-out relief only for children in the F-2B category.

> **Response:** Yes. When a direct beneficiary who is initially in the F2A classification turns 21 and the LPR petitioner subsequently naturalizes, the order of operations is treated as follows: (a) upon turning 21, the child automatically converts to the F2B; (2) upon petitioner's naturalization, the F2B automatically converts to the F1 classification; (3) the beneficiary may make a written request to USCIS to "opt-out" of the conversion to F1 and remain in the F2B classification; (4) the CSPA age calculation may be applied to determine if the beneficiary has a "CSPA age" under 21.

d) Does the Service intend to modify its narrow interpretation of CSPA's one-year requirement after the three unpublished BIA decisions interpreted the requirement as "seeking" LPR status and not "filing for" LPR status?

> **Response:** No. USCIS maintains that seeking to acquire lawful permanent residence is accomplished through one of the following methods: (a) filing Form I-485, Application to Register Permanent Residence or Adjust Status; (b) submitting Form DS-230 to begin consular processing for an immigrant visa petition abroad or (c) by being the beneficiary of Form I-824, Application for Action on an Approved Application or Petition. Permanent resident status can only be obtained through a grant of adjustment of adjustment of status or admission as a LPR by DHS (the latter based upon DOS's issuance of an immigrant visa), therefore any action taken to prepare for or consider obtaining LPR status outside of these processes does not constitute "seeking" since the result can only be obtained by virtue of filing an application with USCIS or submitting an application with DOS.

e) If a beneficiary filed/moved for humanitarian reinstatement and it is denied, can he or she re-file with more supporting documentation? The 30-day period within which to file a motion to re-open or reconsider has already passed.

> **Response:** A denied beneficiary is give one "bite of the apple" for each possible administrative recourse to an unfavorable decision. However, if the humanitarian reinstatement request was denied prior to enactment of 204(l), the beneficiary may file a new request for humanitarian reinstatement in light of the additional ameliorative considerations given in light of this legislation.

f) When does the Service anticipate publishing regulations governing the CSPA? Section 204(l)?

> **Response:** They are currently being developed. Giving the standard process for developing and reviewing regulations, USCIS cannot predict a date for publishing the NPRM.

Office of Public Engagement

Question: SSI Benefits

Please provide an update on the inter-agency efforts to identify elderly and disabled refugees who are being cut-off of their SSI benefits and what is being done to target/serve this population to ensure that they naturalize within the 7 year time limit.

Response: USCIS hosted several meetings and teleconferences with relevant federal government partner agencies, including the Social Security Administration (SSA), the Health and Human Services Administration on Aging and Office of Refugee Resettlement (ORR), the Office of Management and Budget (OMB), the White House, Community Based Organizations (CBOs) and advocacy groups. The focus of the meetings was brain storming ideas for expanding outreach to refugees and certain noncitizens regarding the expiration of SSI benefits for those persons who are only eligible to receive SSI benefits for up to seven years unless they become U.S. citizens. The meetings gave USCIS the opportunity to discuss the issues as well as assess the resources of each agency for supporting outreach efforts.

USCIS also conducted a national engagement on April 21, 2011 which included CBOs, advocacy groups, State Refugee Coordinators, area agencies on Aging, Congressional Staff, English as a Second Language (ESL) teachers, representatives of SSA local offices, and other state and local government stakeholders. This interagency collaboration and work with community partners allowed USCIS to educate stakeholders and respond to their questions about the expiration of SSI benefits, as well as discuss the available resources each agency has to support outreach efforts.

USCIS consistently uses its Community Relations Officers (CROs) to disseminate information about this issue to their respective stakeholders and community based organizations and encourage stakeholders to use USCIS's citizenship resources.

The Citizenship Public Education and Awareness Initiative promotes awareness of the rights, responsibilities, and importance of United States citizenship, and the free naturalization preparation resources available to permanent residents and immigrant-serving organizations. This awareness and education campaign is very important in raising awareness about the citizenship process so that refugees and noncitizens can start the process of applying for citizenship as early as possible. For USCIS citizenship resources, please see below.

The new Citizenship Resource Center www.uscis.gov/citizenship is a centralized resource for citizenship preparation and education, with a variety of free resources for learners, teachers, and organizations. A free copy of the Civics and Citizenship Toolkit is available at www.citizenshiptoolkit.gov. All Office of Citizenship educational materials can be found on the Citizenship Resource Center at www.uscis.gov/citizenship.

FOD Follow-up: USCIS will prioritize the processing of Form N-400, Application for Naturalization, for (1) individuals who are within one year or less of having their SSI benefits terminated and (2) whose Form N-400 is pending four months or more from the date of receipt.

An applicant for naturalization who will soon lose SSI benefits should request that the application be expedited and inform USCIS two ways. When filing Form N-400, noncitizens receiving SSI benefits can notify USCIS by (1) placing the acronym "SSI" at the top of first page of the Form N-400 and (2) including a copy of their most recent SSA letter identifying when their SSI benefits will be terminated. If an applicant has already filed an N-400, the application has been pending for more than four months, and the applicant is within less than a year of the termination of SSI benefits, the applicant **must notify** USCIS by contacting the local USCIS Field Office to provide a copy of their most recent SSA letter identifying when their SSI benefits will be suspended or terminated.

Field Operations Directorate

Question: **Lost Record of G-28 on File**
There have been instances of USCIS loosing our G-28 at filing or midway through the process (i.e. - only client got receipts and when we call for inquiry they say no G-28 on file or we get receipts so clearly a G-28 exists and then we call and they say no G-28 on file or we never get approval notice.) What should an attorney do?

> **Response:** The G-28 should not have been lost; it should be both in the file and record in our systems. ISOs should contact the attorney or representative of record; however, on occasion this does not happen. USCIS believes that these are isolated incidents and would welcome examples. We have asked field leadership to remind ISOs that represented applicants should not be contacted without first notifying the attorney and any notices or correspondence should also be sent to the attorney.

Question: N-600s for Individuals Residing Abroad
N-600 – It is our understanding that an the N-600 applicant (a U.S. citizen) must attend an oath ceremony at the district office. If the N-600 applicant is abroad, can the oath ceremony take place at the U.S. Embassy or at the USCIS office abroad? Also, please advise how filing jurisdiction is determined for an N-600 applicant who resides abroad.

Question: N-600s for Individuals Residing Abroad
It is our understanding that an the N-600 applicant (a U.S. citizen) must attend an oath ceremony at the district office. If the N-600 applicant is abroad, can the oath ceremony take place at the U.S. Embassy or at the USCIS office abroad? Also, please advise how filing jurisdiction is determined for an N-600 applicant who resides abroad. (L. Rose)

> **Response**: Generally, applicants residing abroad file form N-600K, Application for Citizenship and Issuance of Certificate under Section 322 of the Immigration and Nationality Act (INA). Under section 322(d) of the INA, a child of a member of the Armed Forces of the United States, who is residing abroad with the member on official orders, may take his or her oath of allegiance abroad. USCIS recommends that a child eligible under 322(d) file Form N-600K with the USCIS overseas office having jurisdiction over the child's overseas residence, or with the USCIS Nebraska Service Center.
>
> Generally, a child residing in the United States who acquired citizenship automatically under section 320 of the INA should file Form N-600, Application for Certificate of Citizenship, to obtain a certificate of citizenship. There is no provision of law that allows a child who automatically acquired under section 320 of the INA to take the oath of allegiance abroad. The provision of law cited above allowing certain children of member of the military to take the oath of allegiance abroad only applies to cases under section 322(d) of the INA, not to section 320 of the INA.

Question: N-648 Expiration
During the February 18 USCIS webinar on N-648s, there was a question about whether N-648s expire. We were told that USCIS would research this question and provide a definitive response at a later date. Our understanding, dating back to the April 1999 policy guidance, is that the only time restriction on the N-648 is that it be submitted within six months of when it was completed by the medical professional,

and that if it is filed within the six month timeframe, it remains valid and does not expire. Can you please clarify if this has changed?

> **Response:** Form N-648 must be submitted within six months of when Form N-648 was completed and signed by the medical professional. Although the regulations require the applicant to submit Form N-648 at the time of filing Form N-400, and failure to do so may delay the time for the adjudication of the Form N-400, USCIS also realizes that certain circumstances, including a medical professional's unavailability or the applicant's lack of available funds, may prevent the concurrent submission of Form N-648 and Form N-400. In such cases, the Form N-648 must have been completed within six months of the interview date and applicants requesting a disability exception should present the Form N-648 to the USCIS Office at the beginning of the interview. The USCIS Officer must consider Form N-648 even if it is submitted after the filing of Form N-400 and must not draw any negative inference regarding the applicant's medical condition as a result of the late filing. Once a valid and timely Form N-648 is submitted to USCIS, the form does not expire.

Service Center Operations Directorate

Question: Recognition of ECFMG Certification

Our members continue to report occasional Requests for Evidence on immigrant and nonimmigrant petitions, soliciting evidence that a physician beneficiary's foreign medical degree is the equivalent of a U.S. medical degree despite the fact that the initial petition filing included a certificate from the Educational Commission of Foreign Medical Graduates (ECFMG). We respectfully request that USCIS issue guidance to the field clarifying that an ECFMG Certificate ***is*** sufficient evidence of the foreign medical degree's equivalence to a U.S. degree, as evaluation of the foreign degree is part of the ECFMG certification process that is a prerequisite for a foreign-educated physician's admission to U.S. Graduate Medical Education. We would also ask that USCIS remind adjudicators that equivalency to a U.S. medical degree is also sufficiently demonstrated through evidence that the physician beneficiary has passed all three steps of the U.S. Medical Licensing Examination and holds an unrestricted medical license in the state of intended employment. *See* Adjudicator's Field Manual, Chapter 22.2(j)(1)(D). Therefore, a formal credentials evaluation is not required in circumstances where this alternative test for medical degree equivalency is satisfied.

We will break this question/recommendation into two sections.

a) Our members continue to report occasional Requests for Evidence on immigrant and nonimmigrant petitions, soliciting evidence that a physician beneficiary's foreign medical degree is the equivalent of a U.S. medical degree despite the fact that the initial petition filing included a certificate from the Educational Commission of Foreign Medical Graduates (ECFMG). We respectfully request that USCIS issue guidance to the field clarifying that an ECFMG Certificate ***is*** sufficient evidence of the foreign medical degree's equivalence to a U.S. degree, as evaluation of the foreign degree is part of the ECFMG certification process that is a prerequisite for a foreign-educated physician's admission to U.S. Graduate Medical Education.

> **Response:** USCIS would like to note that an equivalency evaluation, including a certificate from the Educational Commission of Foreign Medical Graduates (ECFMG) is advisory in nature and the final determination continues to rest with USCIS (*See* *Matter of Caron International,* 19 I&N

Dec. 791 (Comm. 1988), *Matter of Sea, Inc*. 19 I&N Dec. 817 (Comm 1988), and *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).). USCIS appreciates this recommendation and may consider this request for future policy guidance.

b) We would also ask that USCIS remind adjudicators that equivalency to a U.S. medical degree is also sufficiently demonstrated through evidence that the physician beneficiary has passed all three steps of the U.S. Medical Licensing Examination and holds an unrestricted medical license in the state of intended employment. *See* Adjudicator's Field Manual, Chapter 22.2(j)(1)(D). Therefore, a formal credentials evaluation is not required in circumstances where this alternative test for medical degree equivalency is satisfied.

Response: We will remind adjudicator's that the topic of United States Medical Degree (MD) Equivalency of Foreign Medical Degrees is discussed in AFM Chapter 22.2(j)(1)(D) and introduced in the June 17, 2009 Memo titled, *Revisions to Adjudicator's Field Manual (AFM) Regarding Certain Alien Physicians Chapter 22.2(b) General Form I-140 Issues (AFM Update AD09-10).*

The AFM and this memo outline when a foreign medical degree may qualify as the equivalent of a U.S. MD degree and thus an advanced degree for EB2 purposes, which includes the scenario outlined in the above question.

Question: VIBE Requests for Evidence

Please provide clarification on the use of the VIBE system to verify an employer's business identity. There are a number of scenarios in which an existing and legitimate employer may not have up-to-date Dun & Bradstreet data (e.g., a hospital system that is acquired by another entity, resulting in a name change; a hospital staffing company with multiple incorporated entities nationwide whose financial data is consolidated into one corporate entity and does not reflect the individual entities in D&B). In these types of situations, petitioners are receiving RFEs that lead to lengthy and costly delays in the employer's ability to meet its staffing needs. Petitioners can certainly provide the kind of documentation requested in VIBE RFEs (e.g., leases, invoices, payment receipts, other documentation of the business' operations) as part of the initial filing. However, this would seem to be at odds with VIBE's purported goal of eliminating the need to submit extensive paperwork with each petition. Please provide guidance on what type of evidence petitioners might submit with initial petitions that will avoid the issuance of a VIBE-based RFE. Also, please clarify whether USCIS *retains* information obtained through VIBE-based RFEs so that the same petitioner need not respond to the same RFE on multiple filings. This again seems counter to VIBE's purpose of reducing redundancy of information collection.

Response: As USCIS has stated previously, VIBE is an additional tool for ISOs to use in the overall adjudicative process. USCIS will not deny a petition based upon information from VIBE without first giving the petitioner an opportunity to respond to USCIS's concerns. USCIS will issue an RFE or a Notice of Intent to Deny (NOID) if there is derogatory or contradictory information found in VIBE that is material to the benefit requested and not outweighed by evidence submitted with the petition. The ISO will make a final decision based on the totality of the circumstances.

USCIS would recommend that petitioners who have very recently made significant changes ffecting their business operations (such as being acquired by a new company or moving to a new location) submit documentary evidence to explain the corporate change and substantiate the nature and identity of the new entity. Doing so may prevent the issuance of an RFE to clarify the petitioner's validity. The goal for VIBE to eventually reduce the redundancy of RFEs related to the validity of a petitioner remains and USCIS continues to work to meet that goal. A recent technical enhancement to the VIBE system provides USCIS with a new capacity to relay information to adjudicators at all Service Centers about evidence received in response to an RFE. However, at this time, petitioners must respond directly to ***each*** RFE issued by USCIS --failure to respond directly to USCIS could result in denial.

Question: I-539 – H-4 Cases

When an I-539 is submitted for spouse and two siblings as derivative H-4s and one sibling ages out, the CIS will grant the child who ages out an H-4 status only until his 21st birthday. If included in the I-539 application is a second child who will not turn 21 years old, will the second child's H-4 be granted only until the older child turns 21 years old? If so, are we required to file a separate I-539 for the younger child to avoid this scenario? Along those lines, will the spouse included with the I-539 also be granted only until the 21st birthday of the oldest child? It seems that to limit all derivative beneficiaries on the same I-539 to the shortest time available to any one of the beneficiary unfairly reduces the options to the other beneficiaries or forces them to file two separate applications and pay two separate filing fees.

Response: The practice at each service center, in accordance with regulations, is that extensions granted to family members on the same application be for the same period of time. The shortest validity period granted to any one member of the family would be the same for all on that application.

Specifically, 8 CFR 214.1.(c)(2) states in part: Extensions granted to members of a family group must be for the same period of time. The shortest period granted to any member of the family shall be granted to all members of the family.

Generally, when an H-4 nonimmigrant requests an extension of status, the validity period will be the same as that of the principal. However, if one of the applicants is a dependent child who will turn 21 before the principal alien's stay expires, the validity period for that applicant and any co-applicants will extend until one day prior to the dependent child's 21st birthday.

Question: H-1B Cap Exemption

a) Petitioner's Election on Cap Exemption

We would like to reiterate our request that USCIS issue guidance to the field clarifying that petitioners may elect to file H-1B petitions as subject to the annual fiscal quota even if the petitioner has previously been approved as cap exempt or otherwise has a basis for claiming cap exemption. We understand that USCIS wishes to approve as many petitions as possible on a cap exempt basis in order to maximize the number of H-1Bs that remain available to cap subject petitioners. However, given the current uncertainty with regard to USCIS' standard for adjudicating cap exemption cases - uncertainty that has not been resolved as a result of the April 28, 2011 Interim Policy Memo, which did not articulate a new standard for cap exemption - many petitioners are forced to rely upon cap subject petitions in order to ensure any kind of predictability in planning for their workforce needs. There has been no APA notice and comment

rulemaking, or even informal policy guidance explaining USCIS' refusal to honor the petitioner's request to be counted toward the H-1B cap, yet several of our members report that their cap subject petitions have been treated as though filed with a request for cap exemption despite having requested a cap number. We request that, at least until USCIS promulgates the new standard on cap exemption mentioned in the March 18, 2011 Press Release, that VSC honor an H-1B petitioner's request to be counted against the cap in all cases.

> **Response:** Please note that INA 214(g)(5) states:
> The numerical limitations contained in paragraph (1)(A) **shall not apply** to any nonimmigrant alien issued a visa or otherwise provided status under section 101(a)(15)(H)(i)(b) who --
>
> (A) is employed (or has received an offer of employment) at an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a))), or a related or affiliated nonprofit entity;
> (B) is employed (or has received an offer of employment) at a nonprofit research organization or a governmental research organization; or
> (C) has earned a master's or higher degree from a United States institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)), until the number of aliens who are exempted from such numerical limitation during such year exceeds 20,000. (emphasis added).
>
> Please also note that the page 19 of the Form I-129 instructions state:
> "Regardless of work locations, the following types of petitions should <u>always</u> be sent to the California Service Center…3. H-1B petitions where the employer is statutorily exempt from the cap…" As such, these petitions should not be filed at the Vermont Service Center.

b) Notation on I-797 Regarding Cap Exempt vs. Cap Subject Approval

USCIS should consider amending its I-797 Approval Notices for H-1B to provide an annotation as to whether the approved petition has been counted against the annual fiscal quota, or not. In many instances, a beneficiary is personally unaware of whether s/he has been counted toward the "H-1B cap" since that is indicated only on the I-129 petition filed by the employer and the beneficiary is not always given access to this information or informed of whether the petitioner is cap exempt. This can cause confusion when the beneficiary subsequently transfers to another employer and the new petitioner is uncertain whether the beneficiary has yet been counted toward the cap. Since the beneficiary is almost always given the I-797 Approval Notice for his/her petition, an annotation on that notice would clarify for the beneficiary (and future employers/attorneys) how that petition had been adjudicated. This would also benefit USCIS by providing an easily identifiable "marker" of cap exemption that ISOs could use when verifying whether a petition is entitled to deference on the issue of cap exemption under the April 28, 2011 Interim Guidance Memo.

> **Response:** USCIS thanks IMGT for their suggestion regarding modifications to the Form I-797, Approval Notice. We will examine the feasibility of this under our current systems, as well as under the umbrella of Transformation**.**

c) Clarification on "Employed At" Cap Exemption Cases

As is noted in the plain language of INA section 214(g)(5)(A-B), when the Service determines that a cap exemption applies, the exemption attaches to the ***entity*** that has been identified as a "related or affiliated nonprofit entity" and to all H-1B employees at that entity. The cap exemption is ***not*** contingent upon the H-1B beneficiary's participation in any specific activity performed within that entity. This is true regardless of whether the employee will be employed directly ***by*** the qualifying nonprofit entity, or employed by a third party to work ***at*** the qualifying nonprofit entity. Nonetheless, USCIS' policy guidance (*See* Interoffice Memorandum from Michael Aytes, Associate Director for Domestic Operations, USCIS "Guidance Regarding Eligibility for Exemption from the H-1B Cap Based on § 103 of the American Competitiveness in the Twenty-first Century Act of 2000" (HQPRD 70/23.12) (June 6, 2006)) and the recently revised I-129 H-1B Data Collection Supplement Form both specify that a beneficiary who will be employed by a third party petitioner to work at a qualifying cap exempt entity must demonstrate that the beneficiary's "job duties. . .directly and predominantly further the normal, primary, or essential purpose, mission, objectives, or function of the qualifying institution, namely higher education or nonprofit or government research." This restrictive standard is wholly unsupported by the statute and has a profoundly negative impact on the healthcare sector, in particular. For example, under this standard, a physician employed by a physician practice group working at a nonprofit hospital affiliated with an institution of higher education would not qualify for H-1B cap exemption because the physician's job duties (i.e., treating patients) would not "directly and predominantly" further higher education. The inclusion of this restriction is an *ultra vires* contravention of the enabling statute and we request that USCIS issue clarifying guidance retracting this policy and amend the H-1B Data Collection Supplement Form accordingly. (IMGT)

> **Response:** We are presently examining this issue within the context of the comprehensive USCIS policy review. We appreciate IMGT bringing this issue forward and we will give full consideration to the position stated by IMGT in developing additional policy guidance. We also anticipate clarifying this issue in the AC21 proposed rulemaking which is currently under development, and stakeholders will have the opportunity to submit comments following the publication of the rule in the Federal Register.

Question: I-797 Notices for J-1 Waivers Mailed to Wrong Attorney

The Vermont Service Center (VSC) consistently sends I-797 Notices of Action (receipt notices and approval notices) for J-1 waiver cases to attorneys other than the attorney of record named on the G-28. It appears that the receipt notices and approval notices are being mailed to the immigration attorney within the law firm whose last name comes first alphabetically even if that attorney is not the attorney of record for the particular case (please refer to attached chart). We have raised this issue with VSC in the past and have been told that the problem lies with the Department of State's Waiver Review Division failing to give VSC the correct attorney name. However, since the Waiver Review Division has failed to correct this problem despite repeated requests, we would like to ask: (1) Would USCIS please contact the DOS Waiver Review Division and work with it to resolve this issue; (2) Would VSC please re-double its efforts to ensure that the I-797 notices for J-1 waiver cases are sent to the attorney who is "cc"d on the DOS recommendation letter and whose name appears on the accompanying G-28; (3) Is there anything that we, as practitioners, can do to facilitate this process (e.g., sending another copy of the signed G-28 to the VSC, etc.).

Response: The Vermont Service Center (VSC) is aware of the issue and has taken the following steps to ensure that the attorney of record is properly notified:

- The VSC is seeking to amend the process for uploading this information electronically so that the name of the correct attorney is recorded in USCIS' database when more than one attorney is listed on the Department of State (DOS) recommendation;
- The VSC has contacted DOS to request that waiver recommendations clearly indentify the correct attorney of record; and
- The VSC has provided additional training to officers processing the waiver requests to ensure that the correct information is recorded on all notices

Question: I-485 TRIG/Material Support Cases

Please provide an update on I-485 TRIG/material support cases that are still pending and what efforts are being made to re-review those cases, particularly to determine whether there actually is a material support basis to hold the case. CBOs were previously instructed to contact the HQ Service Center Operations unit with requests for re-review of cases known to be pending on this basis. However, advocates have followed this procedure, but have not received responses to inquiries that have been submitted. Many of these cases have been pending with the NSC for 6 or more years. The I-485 Liberian refugee hold cases, for example, were initially put on hold in 2007 apparently for Liberian refugees who had been merely living in the Ivory Coast prior to entry into the U.S. Interviews of some applicants were done in December 2008 or 2009, and then cases lay dormant until recently, when the remaining 255 cases have started being transferred to local offices for interviews.

Given the broad sweep of this hold (i.e., Liberian residence in the Ivory Coast prior to entry into the U.S.), can you indicate whether some/most of the other TRIG/MS cases on hold relate to broad categories of people? Shouldn't the applicant at least be given specific information as to why his/her case is on hold instead of that the problem is merely "a material support issue?"

The Service's inability to adjudicate these TRIG/MS cases within any reasonable timeframe is a blight on the reputation of an agency that is fortunately becoming more and more accountable to its stakeholders. We urge HQs to have Service Centers re-review these cases to determine if at least some cases can be taken off hold because the basis for the hold was in error or the alleged membership or MS to an organization is no longer pertinent because the group is no longer considered a Tier III organization.

Response: The service centers have taken the initiative to conduct ongoing reviews of cases on hold for TRIG to determine if they can be cleared for adjudication. Cases may be cleared for adjudication for a number of reasons, such as a change in a group's status, a new exercise of the Secretary's discretionary exemption authority, new information relating to country conditions or to specific applicants, and updated legal interpretation. As a result of these reviews, last year, the service centers released approximately 3,500 cases previously on TRIG hold. Such reviews are ongoing, and cases will be released for adjudication as appropriate. We endeavor to respond to all queries on cases that are believed to be on hold for TRIG in a timely manner. If you are aware of specific queries that have not received responses, please let us know so that we can resolve the requests for information.

Specific reference is made in the question to Liberian cases. Please note that certain Liberian refugee adjustment of status cases were placed on hold for review due to issues relating to the civil war. Approximately 90 percent of the Liberian cases that were put on hold for review have

been cleared for adjudication, and the remaining approximately 250 cases, which have been determined to require an interview, have been transferred to field offices to conduct the interviews.