USCIS / BAMSL / AILA Liaison Meeting
Thursday, April 19, 2012

USCIS Announcements

- As of April 4, USCIS "has established an expedited process for reviewing and correcting decisions resulting from certain administrative errors. This process enables customers to request an expedited review of their case and correction of the decision where data entry and/or an administrative error resulted in a denial or rejection of their petition or application." Notice from USCIS website attached.

- Visa retrogression: Effective March 23, 2012, no further EB-2 visas will be authorized for China-mainland born and India applicants with priority dates of August 15, 2007 or later. See State Department's website and Visa Bulletin for additional details.

- EB-5 Inquiries should be directed to the Regional Center mailbox, uscis.immigrantinvestorprogram@dhs.gov.

- USCIS has granted a temporary extension of accommodation for sheepherders in H-2A status. See attached announcement from www.uscis.gov.

- USCIS is seeking public comments on proposed revisions to Form I-9. Comment period runs through May 29, 2012. USCIS announcement and Federal Register notice are attached.

- On 4/2/12, USCIS began accepting H-1B nonimmigrant petitions that are subject to the FY 2013 cap. See attached announcement for additional details.

- Temporary Protected Status designated for Syria. Designation is effective March 29, 2012 through Sep. 25, 2012. See attached notices and www.uscis.gov/tps for additional information.

- USCIS issued a notice of proposed rulemaking regarding provisional I-601 waiver applications to be adjudicated in the United States. These provisional waivers will only be for the unlawful presence grounds of inadmissibility. Comments on the proposed rule are due 6/1/12. Additional information is available at www.uscis.gov/provisionalwaiver.

- Adam Airhart from the USCIS Field Office in St. Paul, Minnesota will be serving as interim supervisor for a couple of weeks. The supervisor position is still in the process of being filled.

- USCIS is asking for feedback on operations at the local level since the meeting with the regional director. Attorneys can send comments to Gary Garman, gary.g.garman@dhs.gov.

AILA InfoNet Doc. No. 12051843. (Posted 05/18/12)

AILA Announcements:

- Book orders for the latest version of *Kurzban's Immigration Law Sourcebook* are closing soon. AILA members may contact Ken Schmitt (KSchmitt@us-legalsolutions.com) or Micki Buschart (micki@bmblawfirm.net) to place orders **until Friday, April 27.**

- On April 25, George Neumann and the Law Offices of Stinson Morrison Hecker are hosting an attorney from the U.S. Department of Justice Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), who will conduct a presentation on the anti-discrimination provision of the Immigration & Nationality Act.

Questions and Answers

1. Many USCIS Districts do not regard a DWI as a disqualifying conviction resulting in a lack of GMC in N-400 proceedings. What is the local office's general policy regarding a simple DWI (no injuries, etc.) conviction within the statutory period? Can the FOD provide the legal provisions relied upon in setting its general policy in this regard?

   USCIS Response: There are many factors that are reviewed and can affect the Service's decision. According to USCIS Counsel:

   See 8 C.F.R. § 316.10(a)(2). See also INA §§ 101(f), 316.10(b)(3)(iii); Puciaty v U.S.Dept. of Justice, I.N.S.; 125 F.Supp.2d 1035; D.Hawaii, 200; Ragoonanan v USCIS. 2007 WL 4465208 (D.Minn.); Rangel v Barrows, No. 07 Civ. 279(RAS), 2008 WL 4441974, at *3(E.D.Tex. Sept 25, 2008).

   In general, a simple DWI, standing alone, is insufficient to preclude an applicant from establishing GMC in the naturalization context. However, the DWI is considered an adverse factor in the GMC determination in the context of the N-400 proceedings. In determining whether the applicant has established GMC, the Service will consider a number of factors, including, but not limited to, the severity of the crime and statutory provision, whether there are any other convictions or violations on the applicant's record, whether the applicant is on probation at the time of the filing of the N-400, and whether there are negative factors taking into account the standards of the average citizen in the community.

2. To whom should requests for "Paroled in Place" (PIP) be addressed (Name of Officer) and what is the general anticipated adjudication period?

   USCIS Response: Assuming the question is addressing "Paroled in Place" (i.e., parole for military families), and *not* "Public Interest Parolees," applications should be submitted by making an Infopass appointment at the local field office. Regional policy is that PIP grants are at the discretion of the District Director. Thus, the Field Office Director makes the decision, subject to second level of

review by the District Director. Given the nature of this type of parole, decisions are generally made within a day or two, assuming all required documents have been submitted. It is incumbent on the applicant to submit the required identity documents and proof of relationship. Generally, the easiest prima facie proof of eligibility is the military dependent ID card.

3. On April 28, 2011, the Department published in the Federal Register its intention to remove designated countries from the National Security Entry-Exit Registration System (NSEERS). That Notice also provides that nationals and citizens of the countries that had been listed are no longer required to register. As a result, ICE will not process a national or citizen of a formerly-listed country for late NSEERS registration. **Will USCIS continue to deem aliens inadmissible for failure to register, or will prior noncompliance no longer be an issue**? At the April 25, 2011 AILA-USCIS National Operations meeting, USCIS informed AILA that USCIS management is reviewing the new policy and will make a determination soon concerning NSEERS cases **in the pipeline**. What is the current status for **prospective and pending** Adjustment Applicants whom are otherwise prima facie eligible to adjust but failed to **unintentionally** undergo Special Registration?

   USCIS Response: These decisions are being made by USCIS Headquarters, *not* the local office. This policy is still under review at the national level, and is an issue to raise with USCIS Headquarters. If an attorney has a question about a specific pending case affected by this policy, it should be brought to USCIS attention through the email inquiry line (stlinquiries@uscis.dhs.gov) and the FOD will forward the case to Headquarters for review.

4. What is the current average processing timeframe for N-600K applications?

   USCIS Response: N-600K applications are filed with the National Benefits Center, then placed in the queue for interview. On average, it takes 2-3 months after filing before a case is in the queue that is "ready for interview." In general, if a case needs to be expedited, the attorney should go to the field office first. Also, anytime an age-out is involved within 90 days or less, the attorney should approach the field office.

   As a reminder, certain "N" forms (specifically, the N-300, N-336, N-600, and N-600K) are now filed at the appropriate lockbox. This will make the forms traceable on the USCIS website or by contacting the National Customer Service Center.

5. Is there a secondary level of review for the email inquiry system currently in place in St. Louis? There was previously some discussion about setting up a secondary inquiry level if attorneys do not receive a substantive response within a certain timeframe. What is the current status of this?

USCIS Response: Not every case receives a second level of review, but cases involving complex legal issues are reviewed by the Office of the Chief Counsel in St. Paul, MN. Every case with a criminal conviction requires review by legal counsel. Legal review by USCIS counsel may add several months to the decision-making process, as files are transferred between St. Louis and St. Paul.

With regard to cases where the response to email inquiries has been that a case is undergoing background checks, in general the reason is that another agency or branch of USCIS is conducting an investigation, which is beyond the control of the local office. More than 90% of these cases are eventually cleared, but the investigations can take several months. In this type of case, instead of submitting the same inquiry every month, the attorney or accredited representative should wait 90 to 120 days, then flag in the subject line of the email that it is the "Second Inquiry", "Third Inquiry", etc. In response to these subsequent inquiries, if an investigation is ongoing, the local office will include in its response a confirmation that the case has been reviewed, e.g., "This case has been reviewed by [name of USCIS personnel]. At this time, the case status is unchanged."

6. What is the current policy regarding adjustment applications for foreign nationals admitted under the VISA WAIVER where I-485 filed AFTER expiration of the 90 day authorized period of stay? Can the FOD provide the legal provisions relied upon in setting its general policy in this regard?

   USCIS Response: Service policy is that an immediate relative is eligible whether or not the 90-day authorized period of stay has expired. **However,** this is only the case as long as a deportation order has not been issued against the immediate relative. If deportation proceedings have been initiated, the visa waiver program allows the foreign national to be summarily removed and waives the right to a hearing. But if an immediate relative files for adjustment before removal proceedings are initiated, USCIS will accept the application for filing.

7. Can Diversity Visa adjustment applicants submit their applications for adjustment 90 days before their number is current? The instructions online tell the DV winner in the USA to go to the local USCIS office, verify eligibility for adjustment and then follow instructions.

   USCIS Response: The 1998 INS policy guidance which allowed for up to 90 days early filing for DV applicants has been superseded. Currently, diversity visa adjustment applicants may only file their applications for adjustment if their allocation cut-off number is shown on the Department of State website. In other words, if the DV regional lottery rank numbers posted on the website are BELOW the specified allocation cut-off number of the applicant, then he/she may file their I-485 packet with the lockbox. In most cases, the maximum early filing period would be about 60 days--depending on when the DoS posts the next month's visa allocation bulletin.

8. Why is the local office issuing the yellow "Pre-Interview Case File Review" notices for naturalization applicants where the only documents needed are the applicant's photo ID and travel document(s)? This is already requested on the interview notice, so it seems like a waste of paper to have this reminder twice.

   USCIS Response: We have discussed this issue with the National Benefit Center (NBC). The yellow notice that you are inquiring about is their Complete File Review (CFR) form. The NBC reviews each N400 prior to shipment to the field office to determine what (if anything) is missing and to request that the applicant bring these items with him/her to the interview. This is done to help eliminate the need to issue an RFE at the end of the interview. While some of these yellow notices only state to bring a photo ID and travel document, others ask for specific documents/evidence to help minimize any delays in the final decision.

9. When an I-751 is filed and the applicant receives a notice that his or her conditional resident status is extended for a year, will the local office continue to place an I-551 stamp in the applicant's passport as temporary proof of their status?

   USCIS Response: Yes. To the knowledge of the Field Office Director, there has been no change in USCIS policy in this regard. The applicant is entitled to this I-551 stamp as long as their application is still pending (i.e., has not been denied by an Immigration Judge).

10. Applicant's fiancée visa application was approved by USCIS and forwarded to the U.S. embassy in Manila. Because the petitioner's income did not meet the affidavit of support requirements, petitioner had a co-sponsor. Petitioner was told that the Manila consulate does not accept co-sponsors. Is this official policy?

    USCIS Response: This is an issue that will need to be resolved with the Department of State. However, the FOD will contact the USCIS office in Manila for more information.

11. Where an I-290B Motion to Reopen/Reconsider is approved and the underlying I-485 application is reinstated, is the previously issued employment authorization document (EAD) also reinstated where it has not yet expired?

    USCIS Response: Yes, the EAD would still be valid. However, USCIS would recommend that the individual carry a copy of the approval notice for the I-290B with their EAD.

12. If a client applying for naturalization failed to register for selective service because he was unaware of the requirement, and is now over age 25, what is the purpose of USCIS asking the applicant to submit a letter from the Selective Service System confirming that they are not registered?

USCIS Response: Sometime people may have registered without knowing it. The letter from Selective Service definitively shows whether or not the person actually registered. As long as the applicant gives a good faith, unintentional reason why they did not register, their failure to register where they did not know of the requirement will not normally be a ground for denying the application.

AILA Follow-up: For applicants who were born on or after Jan. 1, 1960, attorneys / accredited representatives can quickly verify their client's registration status online at https://www.sss.gov/RegVer/wfVerification.aspx.