AILA/SCOPS Teleconference Agenda
January 29, 2014

H-1B Processing and Adjudications

1. As the FY2015 H-1B cap season is upon us, please comment on the following:

a. What steps is USCIS taking to plan for the likelihood that the cap will be reached within the first week of April? Could USCIS share suggestions or practices for stakeholders that may facilitate filings?

Response: USCIS will allocate additional resources to plan for the anticipated influx of H-1B cap filings in April. Petitioner may view filing tips at www.uscis.gov.

b. What lessons were learned from the FY2014 cap adjudications that may be used to improve processing times in FY2015?

Response: USCIS continues to plan and review best practices in anticipation of the FY2015 cap season.

c. What concrete steps is USCIS taking to ensure Service Centers achieve the H-1B processing goal of two months and to ensure that all cases are reviewed prior to October 1, 2015?

Response: USCIS continues to train and allocate additional resources to H-1B adjudications, as needed, in an effort to achieve the stated processing goal of 60 days.

d. While adjudicating cap cases, what steps will USCIS take to ensure that H-1B extensions are not delayed?

Response: As in prior years, USCIS will allocate additional resources to address the high volume of H-1B petitions received in April. As a reminder, petitioners may file H-1B extensions up to six months in advance.

2. On December 23, 2013, USCIS announced that it was transferring H-1B extensions pending at the Vermont Service Center (VSC) to the California Service Center (CSC). The announcement indicated that the petitioners affected by the transfer would receive notices listing the transfer date and should allow 21 days from the date of the transfer notice for the CSC to issue a decision or other notice of action.

Additional information about the workload transfer would be helpful for those with long pending H-1B extensions. Specifically, what are the criteria for deciding which H-1B extensions will be transferred to the CSC? What steps can petitioners take if they have not had any action on their case after 21 days from issuance of the transfer notice?

RESPONSE: H-1B extension petitions were transferred based on date received at the Vermont Service Center. If action has not been taken within 21 days from the date of the transfer notice, petitioners may submit an inquiry using e-Request or call the National Customer Service Center (NCSC) at 1-800-375-5283. For TDD hearing-impaired assistance, please call 1-800-767-1833. When asking about a case status, provide the original receipt number and also say that your case was transferred to a new location.

3. In case number WAC1318450545, the CSC denied a petition for a cap exempt H-1B where the beneficiary would be "employed at" a non-profit entity affiliated with an institution of higher education. In compliance with April 28, 2011 Policy Memo - Guidance to the Field on Giving Deference to Prior Determinations of H-1B Cap Exemption Based on Affiliations, the petitioner included proof of prior cap exempt determinations for the entity at which the beneficiary would be employed. However, in response to this, the decision simply cited the federal regulation and case law to the effect that each petition is a separate proceeding with a separate record and that the prior approvals may have been erroneous and therefore need not be granted deference.

We suggest that the service center erred in failing to apply the April 28, 2011 Policy Memo regarding deference to the previous affiliation-based cap exempt petition approvals submitted in this case. The fact that the beneficiary in this case was to be "employed at" a cap exempt facility rather than "employed by" a cap exempt facility does not impact the applicability of the April 28, 2011 Policy Memo. The purpose of that April 28, 2011 policy memorandum was to provide an interim procedure for determining whether an entity previously found to be cap exempt might be considered cap exempt with regard to later filed petitions. It did not disturb, nor did it purport to disturb, the "employed at" doctrine set forth in the June 6, 2006 memorandum entitled "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 (AC21) (Public Law 106-313)," HQPRD 70/23.12, AD06-27, nor did it undermine the public interest findings supporting the "employed at" doctrine.

The decision of the CSC to deny cap-exemption fails to apply the companion doctrines of "employed at" and "affiliation" that are found in the two complementary memoranda. Please conduct a formal review of this case to ensure that the proper standard was applied, and to ensure that the proper standard is understood by adjudicators.

RESPONSE –

The April 28, 2011 policy memo requires deference to a petitioner who has shown that *its organization* was previously determined to be exempt. USCIS disagrees with the premise that the beneficiary being "employed at" a cap exempt facility rather than "employed by" a cap exempt facility does not impact the applicability of the April 28, 2011 Policy Memo. The memo applies to petitioners who were previously determined to be cap exempt. The analysis of whether a petition is exempt from the cap involves an analysis of both the work location and the beneficiary's duties when the petitioner is seeking exemption based on the fact that the beneficiary will work "at" a cap exempt entity.

4. A problem raised in our November 14, 2012 agenda and again in our January 16, 2013 agenda has resurfaced. Specifically, RFEs are requesting documentation such as valid

contracts, statements of work, work orders, service orders, et cetera, when there is no indication in the petition that this is off-site employment (See, for example, WAC-14-050-50778). Other RFEs where there is a third-party worksite are insisting on very specific documentation. For example, in WAC1405351455, the RFE requests a copy of the contract between the petitioner and the end user, despite the fact that a detailed client letter, detailed vendor letter, and a copy of the services agreement/work order between the petitioner and the vendor were all included in the initial submission. This exceeds the preponderance standard. Moreover, many of these contracts are confidential agreements. Please confirm how a petitioner who receives an RFE requesting documentation such as valid contracts, statement of work, et cetera, when there is no offsite employment should respond. Likewise, please confirm how a petitioner who receives an RFE requesting documentation related to a third-party worksite, when such documentation was provided in the original submission should respond.

RESPONSE: You should always respond to RFEs within the designated time period. If you feel an RFE is unwarranted, boilerplate, or overly broad you may send your concerns by email to scopsrfe@dhs.gov. Your email will be reviewed at Service Center Operations for appropriate action.

I-140 Adjudications based on Certified ETA-9089

5. There are some conflicts between the Department of Labor's (DOL) instructions on preparing the ETA-9089 and USCIS's adjudications of I-140s based on a certified ETA-9089. The DOL Office of Foreign Labor Certification (OFLC) has provided instructions on the proper completion of the forms, DOL PERM FAQs, and, in a few decisions, the Board of Alien Labor Certification Appeals (BALCA) has also opined. *See e.g. GE Healthcare, BALCA No: 2011-PER-02969*. In addition, SCOPS has previously indicated that the ETA-9089 would be reviewed in its entirety to determine minimum qualifications, see AILA Doc# 13081463 and AILA Doc# 13030745. The following are examples involving misinterpretations by USCIS adjudicators:

> a. SRC1390378026: This case appears to have been erroneously denied because the adjudicator mis-read the form as requiring only a bachelor's degree. In this case, box H.6, "is experience in the job required" was answered "no"; however, box H.10, "is experience in an **alternate occupation** acceptable" was answered yes, because experience in a related field was required. Moreover, the specific requirements for the position were outlined in box H.14. Unfortunately, it appears that this was not understood by the adjudicator, as the decision contains no analysis of the ETA-9089 in its entirety. We would appreciate formal review of this case to ensure that the proper standard was applied, and to ensure that the proper standard is understood by adjudicators.
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> b. SRC1313151831: There is also confusion regarding the distinction between EB-3 skilled worker, which does not require a bachelor's degree or equivalent, and EB-3 professional, which does require at least a bachelor's degree. In this case, there was no assertion that the beneficiary's three year degree was equivalent to a four year degree. Rather, the collective reading of H.4, H.9, and H.14 on the ETA-9089 evidenced that the beneficiary qualified as an EB-3 skilled worker. In addition, the I-140 petition correctly marked '1.f' on Part 2, clearly indicating it was a petition for a skilled worker. We would appreciate formal review of this case to ensure that the

proper standard was applied, and to ensure that the proper standard is understood by adjudicators.

RESPONSE: SCOPS cannot comment on live cases; however USCIS will generally consider the issues raised by the terms of these 9089s .

I-140 Adjudications that do not require Certified ETA-9089

6. National Interest Waiver (NIW) petitions filed on behalf of physicians under the standard articulated in *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Comm. 1998) (NYSDOT) are receiving RFEs containing language that physicians who file NYSDOT NIWs should be subject to a higher standard of review than non-physicians filing NYSDOT NIWs, because physicians have another path to the NIW under INA §203(b)(2)(B)(ii) by agreeing to work in a shortage area for 5 years. Examples include: SRC1390385692, LIN1391022699, LIN1391017532. Please confirm that the NYSDOT standard applies equally to physicians as to other fields and professions.

RESPONSE: Regarding the RFE language for NYSDOT physicians' cases, NSC clarified that the language attempts to explain that a physician who is <u>not</u> working in a federally recognized medically underserved area will be subject to the usual NYSDOT analysis while physicians intending to work in a medically underserved area are not necessarily subject to the NYSDOT analysis. We will review our templates to ensure that we are using clear and accurate language.

7. During our November 13, 2013 call, we discussed EB-1(3) petitions that were denied because the U.S. office was considered to be a "mere agent" of the foreign affiliate (SRC1390205974 and SRC1390135137). Another petition was recently denied based on the same basis (SRC1390243392, Motion to Reopen (MTR), SRC1490023975, denied on same basis). As noted in our November 2013, agenda, the decisions did not find that the U.S. entity failed to "do business" in the U.S., but instead concluded that the foreign affiliate had substantial control over the U.S. entity so as to make it an "agent" of the foreign affiliate. While it is true that the definition of "doing business" includes the concept that the U.S. entity cannot be a "mere agent" of the foreign affiliate, prior AAO decisions have focused on whether the U.S. entity was active, not the amount of control or influence the foreign affiliate has over it. This was again upheld in a December 31, 2013 AAO decision, SRC1390205974.

Moreover, the denials relied upon a New York state jurisdictional statute that allows a foreign company to be sued in federal court under diversity jurisdiction, which does not appear to be relevant to eligibility for EB-1(3). A jurisdictional analysis is very different than an analysis of whether a U.S. entity is actively engaged and operating in the U.S. In fact, the denials contain no analysis of the U.S. entity's business activities. Please describe the factors USCIS considers when making a determination that a U.S. office is a mere "agent" of the foreign entity.

RESPONSE: 8 CFR 204.5(j)(2)(C) defines "doing business:" as "the regular, systematic, and continuous provision of goods and/or services by a firm, corporation, or other entity and does not include the mere presence of an agent or office." (emphasis added) As such, USCIS evaluates whether the U.S. entity and the entity abroad are engaged in a regular, systematic, and continuous provisions of goods and/or services, based on the evidence of record. USCIS considers and shall not ignore the evidence submitted by the petitioner. Nevertheless, we will review our templates to ensure that we are using accurate language.

Non-Specific RFEs and RFEs that Misstate the Law

8. AILA continues to be concerned about boilerplate RFEs with little to no discussion of the deficiencies in the original submission. We understand that these multi-page RFEs are meant to be educational, but they have the impact of overwhelming and confusing the petitioner, particularly when the deficiencies are not clearly articulated (*See e.g.*, WAC-14-040-50729, WAC-13-252-50767, WAC-13-252-50687, WAC-13-135-52597; EAC-14-001-51524). In addition, often times the language in the template is not relevant to the petition filed, such as requests for letters from venture capitalists for scientific researchers (*See e.g.,* WAC-13-135-52597). Please share the steps the agency takes to ensure that RFE templates are correctly used?

RESPONSE: USCIS posted the draft O RFE templates for public comment last year as part of the agency's RFE Project. USCIS reviewed all stakeholder comments and made appropriate changes as necessitated by those comments. In late September, Service Center Operations held a "train the trainer" session with both the VSC and CSC. All officers working O petitions were trained in the use of the new templates and the templates were implemented in early November. During training, officers were instructed to detail the specific deficiencies in the petition and explain why the evidence submitted with the case was insufficient to establish eligibility. SCOPS will ask the centers to remind the officers of this portion of the training. With regard to WAC1313552597, SCOPS would like to ask AILA to confirm the receipt number provided. We have reviewed the receipt number in question with the service center but the job listed in the petition does not seem to match that outlined by AILA.

9. Further, in the O-1 petitions referenced above, USCIS requests evidence as to how the peer review activities are indicative that the alien has risen to the pinnacle in the field (a misstatement of the law) *and* how authorship is indicative that the alien has risen to the pinnacle in the field (again, a misstatement). That an alien is of extraordinary ability is established with evidence that is to be considered in the aggregate, that the alien has judged the work of others, has published scholarly articles, and has made original contributions of major significance. We would appreciate formal review of these cases to ensure that the proper standard was applied, and to ensure that the proper standard is understood by adjudicators.

RESPONSE: Thank you for bringing this to our attention. SCOPS will instruct the centers to remind officers to mirror the language in the regulations to note that the

petitioner needs to establish that the beneficiary is "one of the small percentage who have risen to the very top of the field of endeavor". Although the RFE in question used the wrong verbiage, it appears that the correct O-1A standard was applied.

10. If an attorney or petitioner receives an RFE that lacks sufficient clarity, appears to be erroneously issued, or misstates the law, how can the attorney seek supervisory review of the RFE? While we appreciate that RFE's can be submitted for review to SCOPSRFE@DHS.GOV, given that there is usually no response, there is no way to determine if any action was taken. In addition, where a new RFE was sent – EAC1325151169 – there was no indication that this was an amended RFE that superseded the first RFE.

RESPONSE: The RFE email box is not intended for case specific inquiries but rather for petitioners to identify trends and problems. For case specific information, please follow the SRMT process described in question #26.

Erroneous File Transfers

11. SRC1490054082 is an employment based adjustment of status that was filed with both an I-765 and an I-131. While the I-765 was approved, the I-131 (SRC1490054084) was transferred to NSC. According to NCSC (Officer ID 6709387), the transfer was to facilitate adjudication of the I-131. However, I-765s and I-131s are usually adjudicated together, with a combination document provided. If this was in fact an error, what steps should be taken to ensure the I-131 is returned to TSC and properly adjudicated?

RESPONSE: Upon review, we concluded the I-765 and I-131 were inadvertently separated at TSC and the I-131 transferred to NSC. Since this is a Service Center error, we are taking the following steps:

1. The I-131 will be expedited back to TSC and to the supervisor's attention.
2. After adjudication, a combo card will be issued and sent to the applicant's address on file.

I-140 Erroneously Rejected & Priority Date No Longer Current

12. During the May 9, 2013 TSC/NSC Stakeholder engagement, SCOPS indicated that in a concurrently filed I-140/I-485, if the fees were paid in one check, the entire package would be rejected. However, if the fees were paid in two checks, the Form I-140 would be accepted. Unfortunately, in a recent case, both the I-485 and the I-140 were rejected when separate checks were submitted (SRC1404850673/SRC1490078566). Realizing that the I-485 had an incorrect fee (after it was submitted, but before it had been rejected), the attorney of record interfiled a new I-485 package with the correct filing fee (on November 27, received on November 29). However, because of the erroneous rejection of the I-140, this timely filed I-485 with proper fee was also rejected. The problem is that the priority date retrogressed as of December 1. Please advise how cases like this can be brought to USCIS's attention, and what steps may be taken for resolution.

RESPONSE: If an applicant feels that USCIS erroneously rejected a transaction resulting in a missed priority date, he/she may contact lockbox support at lockboxsupport@uscis.dhs.gov.

CLEAR GOVERNMENT ERROR

13. An adjustment of status application filed on 5/16/2013 (SRC-13-902-87628) was incorrectly denied based on the finding that applicant was not eligible for adjustment under INA §245(i) because the labor certification filed prior to 4/1/2001 was "not approvable when filed." In order to establish that an alien is grandfathered by a filing from April 30, 2001, or earlier, the labor certification or visa petition must have been approvable when filed, which is defined as a petition that is: (1) "properly filed," (2) "meritorious in fact," and (3) "non-frivolous." *See* 8 CFR §245.10(a)(1)–(3). If these requirements are met, an alien may continue to be grandfathered even if the qualifying labor certification or visa petition is subsequently denied, revoked, or withdrawn. *See* 8 CFR §245.10(i). In this case, it appears the labor certification was "approvable when filed," but was withdrawn. The attorney of record requested reopening since denial was due to service error. Please describe the steps an attorney or petitioner can take to bring Service errors to USCIS's attention.

RESPONSE: When an adjustment application is denied, an applicant may file Form I-290B, *Notice of Appeal or Motion* with fee, to notify USCIS that the applicant is filing a motion to reopen or reconsider. 8 CFR 103.5(a)(5) allows USCIS to reopen a case on its own motion.

14. It happens that mail goes missing. Unfortunately, there's no way to prove a negative, and unless the mail is returned to the Service Center, USCIS will often refuse to re-issue a receipt or approval notice without an I-824. This seems unduly burdensome. Please consider whether there is anything else that can be done if a receipt or approval is not received by either the petitioner/applicant or the attorney.

RESPONSE: USCIS re-issues a duplicate approval notice without fee if the mail was returned to the Service Center as undeliverable or USCIS received a request for a duplicate approval notice within 30 days of the decision. Other than the scenarios discussed above, the petitioner/applicant or the attorney must file Form I-824 for a duplicate approval notice.

BEST PRACTICES FOR SUPPORTING DOCUMENTATION

15. Please describe how USCIS utilizes internet resources in the course of adjudicating petitions and applications for immigration benefits. In addition, do adjudicators go on-line to check links in documents submitted from on-line sources, or is it preferred to submit copies of those materials? If copies are preferred, should these be screenshots or print outs from the website?

RESPONSE: Each application and petition is adjudicated on a case-by-case basis. During the course of the adjudicative review, officers may use additional tools, such as the internet, as part of their research. Although officers may research additional information on-line, petitioners should submit specific excerpts of any relevant materials as part of their formal

record of proceeding. Copies may be in the form of screenshots or printouts from relevant websites. USCIS however, will issue appropriate notification to the petitioner/applicant if the third party information has an adverse impact on the adjudication of their petition/application to allow the petitioner/applicant the opportunity to provide countervailing evidence.

RECEIPTING OF TIME SENSITIVE FILINGS

16. If a filing deadline falls on a weekend or holiday, and the filing is received by the Lockbox on the deadline but is not "accepted" until the following Monday, is the petition considered timely filed? The February 2005 minutes from a meeting with TSC (which were approved by TSC), indicate that RFE responses that are received on a weekend or holiday will be accepted the following business day. Please clarify whether other filings will be considered timely if delivery was attempted on a holiday or weekend. If yes, will the receipt notice reflect the weekend or holiday date, as opposed to the date it was processed by the Lockbox? Also, what is the process for an attorney to remedy a failed delivery attempt, where it is a time sensitive petition? A recent example is an "age-out" case, SRC-13-903-69475, receipted the Monday after the derivative child's 21st birthday.

RESPONSE: .

When our offices, including a lockbox, are closed (such as on weekends or holidays) we are unable to receive and receipt filings. Pursuant to 8 CFR 103.2(a)(7), with certain exceptions, "a benefit request will be considered received by USCIS as of the actual date of receipt at the location designated for fling such benefit request whether electronically or by paper format and the receipt date shall be recorded." Should unique circumstances or programs exist, all receipt evidence would be considered.

NSC and OPT

17. We have been attempting to obtain a response on the conflict between the SEVP's OPT 2010 Policy Guidance in Section 7.2.1 (p. 17 – 18) SEVP OPT Policy Guidance and NSC's recent denials of STEM extensions of OPT for students because of engaging in an unpaid internship or performing volunteer work . NSC determined that the students had not engaged in authorized employment. The 2010 SEVP policy guidance has been the primary guidance used to advise students on how to maintain their status during OPT. It is used to train DSOs and by DSOs to formulate informational programs for students about OPT. We are unaware that USCIS has objected to this SEVP policy, and it is only through the actions of one Service Center that the public is aware that there may be a disagreement between the two agencies.

> *"Unpaid employment. A student may work as a volunteer or unpaid intern, where this practice does not violate any labor laws. The work must be at least 20 hours per week for a student on post-completion OPT. A student must be able to provide evidence acquired from the student's employer to verify that the student worked at least 20 hours per week during the period of employment."*

Can you please confirm that the SEVP guidance above is still accurate? If not, when was this changed? In addition, how can cases denied on this basis be corrected?

RESPONSE: SCOPS has resolved the conflict between the SEVP's OPT 2010 Policy Guidance in Section 7.2.1 (p. 17-18) SEVP OPT Policy Guidance and the recent denials of STEM extensions of

OPT for students because of engaging in an unpaid internship or performing volunteer work. All four USCIS Service Centers are following the ICE SEVP's publically posted OPT Policy Guidance in the adjudication of student applications.

If any DSO and/or student have encountered this as the sole issue in their denial, please contact the Service Center that issued the decision through the dedicated student mailbox with your USCIS receipt number and detailed information.

CSC.StudentEAD@uscis.dhs.gov

VSC.Schools@uscis.dhs.gov

TSC.Schools@uscis.dhs.gov

NSC.Schools@uscis.dhs.gov

In addition, USCIS will issue a public message notifying DSOs and students via SEVP and the CSPE of the availability to resolve these student applications through the dedicated student mailboxes.

CORRECT ADDRESS FOR FILING APPEALS

18. CSC denial notices state: "Your notice of appeal must be filed with this office at the address at the top of this page within 30 days of the date of this notice." In other words, it directs the appellant to file with the CSC. However, the I-290B instructions indicate that an appeal from any other decision made by a USCIS Service Center should be filed at the Phoenix Lockbox. *See http://www.uscis.gov/i-290b-addresses.* Please confirm the correct venue to file appeals. If appeals must be filed with the lockbox, please correct the CSC denial notice template.

RESPONSE: The USCIS website provides detailed instructions about filing addresses based on petition/application type for which an I-290B motion or appeal is being filed. The pertinent adjudications section has been advised to review the current template instructions. CSC will review denial templates and correct any that contain incorrect information.

G-28s NOT RECOGNIZED

19. There continue to be problems getting a G-28 recognized in a timely manner when counsel enters an appearance after the initial filing. This is true for G-28s with a cover letter attached, which are first routed to the correspondence unit, as well as for those sent without any attachments, and for those included in response to an RFE. In fact, NSC recently reported a backlog of a couple of weeks even for G-28s not routed to the correspondence unit. Some examples include LIN0800951019, LIN0615552860, LIN1390935645. Unfortunately, NCSC was unable to assist, because they

will not look into a case unless they clearly see a G-28 on file. However, through direct Service Center liaison, NSC is resolving these cases.

We respectfully request that USCIS remind the mail room of the critical nature of G-28s, and to closely check for the document in every instance. When there is a large volume of mail, the G-28 can be missed, especially now that the form is no longer blue. In the case of G-28s submitted after filing, USCIS could instruct the mail room that any G-28 received (with or without attachments) should be directly matched to the file (without first routing to the correspondence unit) and should be flagged for the adjudicating officer if the electronic record indicates recent Service action. This is essential to ensure that a party's right to counsel is honored in practice and that counsel receives proper notification.

RESPONSE: The NSC is implementing a new process by having their Service Center Operations Support Services contractor, data enter G28s that come into their center as general correspondence. NSC's previous process had G-28s routed to the Customer Contact Service (CCS) unit for review and the officers in CCS would provide instruction for data entry. Unfortunately, the volume of mail created a backlog for the CCS unit.

The newly implemented process will improve customer service and likely reduce attorney inquiries.

SECURE MAIL INITIATIVE

20. For LPR and EAD/AP combination cards, stakeholders previously received e-mails notifying them when the card was mailed, along with a tracking number to monitor the delivery. However, in the last few months, the tracking numbers are no longer provided. Could you explain this change?

RESPONSE: This question was returned to AILA for their discussion with OIDP.

PUBLISHED PROCESSING TIMES

21. Published processing times for I-526 petitions have not moved for 6 months, and presently remain at March 2012. Has USCIS stopped processing I-526 petitions, or has USCIS stopped updating the processing times? What are the actual current present processing times, and are they likely to change in the near future?

In addition, I-526 petitions seem to be processed on four different time schedules. One suggestion would be to divide I-526 petitions into four categories for purposes of publishing processing times:

1. Direct EB-5 petitions.

2. Processing time for the first investor in a regional center project until adjudication (which is usually an RFE).

3. Processing time for regional center investors after the first investor in a project has been approved (which is when the project is approved).

4. Processing time for I-526 petitions for projects that have received I-924 exemplar approval.

We would appreciate your feedback.

RESPONSE: This question was returned to AILA for placement on the Field Operations Directorate.

22. TPS processing times at the VSC are only listed for Honduras, El Salvador, and Nicaragua. Are the processing times the same for all I-821s? If not, can the processing times for other countries by posted?

RESPONSE: USCIS strives to process all TPS applications within three months. As each case is unique, however, the actual processing time varies and may be longer depending on the specific facts and circumstances of the case.

We are aware that the current information on the TPS processing time chart is incomplete. We are working to correct and update the information on the web page.

23. What is the processing time for Advance Parole for individuals who have been granted TPS?

RESPONSE: The processing time for the Application for Travel Document (Form I-131) is 90 days, or approximately three months.

INDIVIDUAL CASE LIAISON

AILA very much appreciates the efforts of all the Service Centers and SCOPS in assisting with long-pending cases and other case specific issues. In an effort to continue to foster this partnership, we would appreciate if you could address the following:

24. Please clarify the role of the Community Engagement Officer (CEO) in assisting with urgent matters. For example, could the CEO assist with the following:

(i) Urgent age-out expedite requests;

(ii) Follow up on pending or denied expedite requests that appear to require closer review to avoid irreparable harm to the beneficiary; or

(iii) Issues relating to delivery or failure to accept filings that were submitted when an I-94 was expiring, a priority date was about to retrogress, etc., for a particular case.

RESPONSE: The primary role of the Community Relations Officers at the Service Centers is to engage with stakeholders in a variety of settings, such as telephonic and in person engagements, open houses, conferences, and to solicit stakeholder feedback. CROs also identify trends and issues and elevate them to Center Management and/or SCOPS, as appropriate. Individualized case work is handled through dedicated Customer Service units at the Service Centers.

As a general rule, the escalation process for customer service inquiries is as follows:

- ***Contact Customer Service.*** If the request falls within one of the service request categories, the National Customer Service Center (NCSC) will take the request and forward it to the Service Center. Note that the NCSC can take expedite requests that meet the long standing expedite criteria. The NCSC will flag the request as an expedite for the Service Center.
- ***E-mail the Service Center.*** If more than 30 days have passed with no response, the next step is to email the appropriate USCIS Service Center with the inquiry. The email addresses are posted online. Hit the "Tools" tab, then the "Contact Us" tab, then click on the box for "USCIS Service Centers."
    - California Service Center: csc-ncsc-followup@dhs.gov
    - Vermont Service Center: vsc.ncscfollowup@dhs.gov
    - Nebraska Service Center: nscfollowup.nsc@uscis.dhs.gov
    - Texas Service Center: tsc.ncscfollowup@dhs.gov
- ***E-mail SCOPS.*** If no response from the Service Center within 21 days, send an email to the SCOPS email box at SCOPSSCATA@dhs.gov.

There are some limited instances where the attorney/legal representative/applicant can write to the Service Center mailbox directly, without first calling the NCSC. These would include age out requests, upgrades on employment-based adjustment cases (i.e., EB-3 to EB-2) and requests to expedite a pending adjustment application where visa availability is about to regress.

25. During recent phone discussions between representatives of AILA and TSC, Donald Neufeld, Associate Director, Service Center Operations, and Debra Rogers, Deputy Associate Director, Customer Service and Public Engagement, Ms. Rogers noted that approximately six months ago, USCIS started an escalation process for attorneys within the National Customer Service Center, but noted that this escalation process is currently being underutilized, possibly due to a lack of notice to stakeholders. She also noted that the process would apparently be rolled out to other stakeholders soon. Please provide additional information about this escalation process so that we can disseminate this information to our membership, and describe how stakeholders can expect their issues will be handled.

RESPONSE: When an attorney inquires about a case pending with a Service Center, the specialist will first verify that the attorney/accredited legal representative has a valid Form G-28 on file. If a valid Form G-28 is not on file, the specialist will instruct the attorney/accredited legal representative to send an original Form G-28 to the Service Center where the case is pending and follow up with a copy by fax or e-mail per the instructions provided. The attorney/accredited legal representative has one day to fax or email the Form G-28 to the specialist at the NCSC. The specialist will send a request to the Service Center after confirming that a valid Form G-28 is on file. If the attorney/accredited legal representative does not receive a response from the Service Center within 30 days, he/she can communicate with the Service Center via the designated follow-up email box. If

the Service Center does not respond within 21 days, the attorney/accredited legal representative may send an email to the designated SCOPS e-mail box. If the attorney/accredited legal representative followed the process, the SCOPS program manager will route the inquiry to the Branch Chief over that particular portfolio here in SCOPS for review and response. The SCOPS program manager will then forward the response to the CAO Specialists. If there is no response from SCOPS within 15 days, the attorney/accredited legal representative may call the NCSC and the specialist will create and send a referral to the Customer Assistance Office (CAO). We note that the SCOPS program manager forwards these inquiries as soon as they come into the SCOPS e-mail box and the Branch Chiefs in SCOPS work with the centers to resolve these inquiries quickly and to identify and address any concerning trends. SCOPS receives very few of these types of attorney escalation requests. or accredited legal representative calls the NCSC to inquire.

26. Please describe the process that takes place when an SRMT is initiated through NCSC. How does NCSC interact with the Service Centers when it receives an inquiry on a case? What information is included in the SRMT?

RESPONSE: The initiation process starts when a customer calls the NCSC.

The NCSC Customer Service Reps creates the SRMT by collecting the following information.

- All callers must provide certain information before a service request will be taken and/or honored.
- Customers must provide the following:
  - Receipt Number
  - Name of petitioner/applicant
  - Status of petitioner/applicant (e.g., citizen, permanent resident, nonimmigrant, other)
  - Petitioner/applicant's Alien Registration Number, if any
  - Name of beneficiary (if beneficiary is other than applicant or petitioner)
  - Beneficiary's date of birth (if beneficiary is other than applicant or petitioner)
  - Petitioner's/applicant's date of birth
  - Petitioner's/applicant's country of birth
  - Address of petitioner or applicant
  - Address of beneficiary (if beneficiary is other than applicant or petitioner)
  - Date petition received by USCIS
- We will also ask the customer for some other information on any service request:
  - An email address, if any
  - A phone number, if any
  - An alternate phone number, if any
  - The best time to contact the applicant/petitioner/representative and the best number at which to contact him/her.

Once the NCSC collects the above information, it is routed to the Service Center that has jurisdiction over that case. Once the receiving office determines that a response to the customer is necessary and appropriate, they will respond to the applicant/petitioner/representative by mail, phone, fax or email and update SRMT with the

27. While helpful in other matters, AILA Liaison rarely receives a response from VSC on inquires related to TPS and I-612s. Approximately 90% of these inquiries must be escalated to SCOPS. These include EAC1390321429, EAC1290840458, EAC1390208429, EAC1024544871, EAC1290840458. Is there a specific format that would facilitate a response from VSC?

RESPONSE: As noted, the general escalation process is to first contact the NCSC, and then follow up with the Service Center at the designated service center e-mail box if there is no response to the initial inquiry or if the response did not address the issue. The inquiry may be elevated to the SOCPS email box after all other avenues have been exhausted. Inquiries through the AILA liaison are generally reserved for exceptional circumstances. Having said that, in three of the examples provided, the standard inquiry procedures were not followed. There was no record of any contact with, or communication from, the NCSC regarding the case, nor was there any record of the AOR having contacted the Service Center via the designated e-mail box. In the remaining examples, the attorney/legal representative contacted the call center and the inquiry was addressed. In one instance, the approval notice was re-sent to the AOR and it was returned as undeliverable.

28. During the **May 15, 2013** call, SCOPS stated that for I-290Bs, the processing time goal was 90 days and that inquiries may be made if a case is pending beyond that time. Moreover, SCOPS also indicated that since NCSC could not entertain a telephonic inquiry, it was appropriate to inquire directly with the Service Center's follow up e-mail address. However, when inquiries are submitted to the Service Centers, the response is that "[t]here is no established processing time for the Form I-290B." For example, WAC1390067054 is an I-290B Motion to Reopen or Reconsider from a denied Adam Walsh I-130 Petition that was transferred to the VSC on November 7, 2012. No decision has been forthcoming on the motion and only the standard response from the VSC was received. A similar type of response was received for EAC1390204997. Please confirm that the **May 15, 2013** guidance still stands, and please advise the Service Centers accordingly.

RESPONSE: Thank you for bringing this to our attention. We will clarify with the centers that the internal processing goal for a motion is 90 days. The example case (EAC1390204997) you provided was approved on Jan 15, 2014. The other case (WAC1390067054) is a motion from a denied I-130 Petition (Adam Walsh). In general, the internal processing targeting goal for motion (90-days) may not apply to any of the complex cases that involve AWA.

29. Once an inquiry is raised to SCOPSSCATA, it is well past processing times. The attorney of record has already initiated an inquiry through the NCSC, waited for a response, followed up with the Service Center, and waited for a response. When the inquiry is subsequently raised to SCOPSCATA, the response is usually in the form of an e-mail to the service center asking the service center to resolve the inquiry. Unfortunately, this only elicits a similar "Yes, it's outside processing times but keep waiting" type of response, or that it is "under

review" or is "pending additional review." To wait for another response, only to have it be non-responsive, is very frustrating, and gives the impression that little effort is being made to resolve the case. For example, an inquiry has been pending at NSC on LIN-08-009-55027/LIN-08-009-55169 since 9/4/2012 with multiple attempts to follow-up thereafter. SCOPSSCATA was contacted on 10/23/2013 and SCOPSSCATA responded on 11/7/2013 to say they had contacted NSC to follow up and AILA should wait to hear from NSC. All prior responses from NSC had been that case is pending additional review. Two months later NSC has not yet responded to follow up from SCOPSSCATA. This issue is not isolated to the NSC. AILA requests that more specific reasons for the delay be provided. In addition, what can be done to make the individual inquiry process more efficient?

RESPONSE: Thank you for bringing this to our attention. We are reviewing our processes to see how we can improve our service.

30. Could SCOPS please clarify what types of inquiries regarding DACA cases may be sent to the Service Centers, whether Service Centers are permitted to give a more specific response beyond simply stating that the case remains under review, and whether it is true that all inquiries related to DACA cases that have any sort of substantive component must go to Headquarters?

Response: Occasionally individual cases raise novel policy, legal, or operational questions requires consultation prior to issuing a response to the individual. DACA requestors who have received receipt numbers can monitor the status of their cases via USCIS Case Status Online or can contact the National Customer Service Center (NCSC) via telephone to make specific inquiries about their pending requests.

31. The following petitions are all **at least one year** outside processing times, yet despite repeated inquiries, there has been no substantive response. Could SCOPS please look into these cases and provide an update on processing? If a decision cannot be rendered at this time, please provide a clear substantive reason for the delay.

- SRC0800352157, EB-3 converted to EB-2 current, AOS pending (481)
- SRC0617251918/LIN0800452854, response to NOIR submitted September 2012 (844)
- SRC1090192203, EB-1 I-485 has been pending since August 2010 (443)
- EAC1290841688, I-290B filed July 30, 2012 – underlying petition AOS. **Currently at TSC** (674) The applicant should receive a notice in the mail soon.
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- LIN1014850762, EB-2 pending since May 2010, response to RFE rec'd Nov 2012 (1008)
- SRC1290219109, AOS pending since March 2012 (1716)

  SRC1290269911, EB-1-3 and concurrently filed AOS pending since May 2012 (1481) The I-140 will be approved and the families I-485's will be processed.
- SRC1021051253, I-730 pending since July 2010 (1803)
- SRC1090192203, EB-1 AOS pending since August 2010 (443)
- SRC1290197415, EB-1 AOS for principal and four derivatives pending since March 2012 (1964)

The remaining cases remain under extended review and we will update AILA as the cases progress.